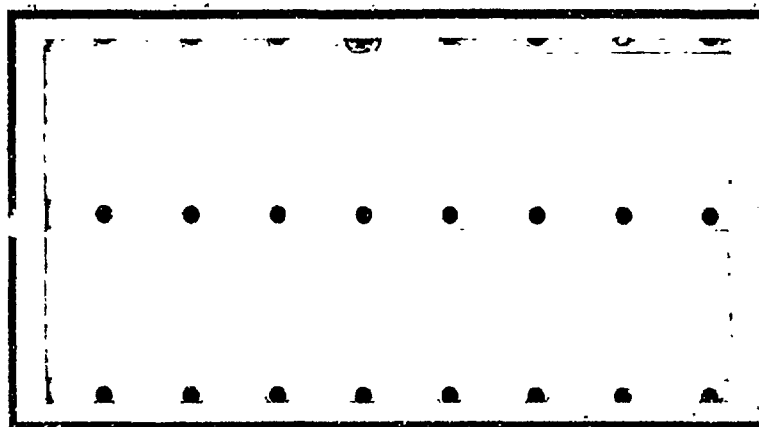


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AN ANALYSIS OF CONFLICT OF INTEREST
LAW AND THE EFFECT THOSE LAWS HAVE
ON THE POST-SERVICE EMPLOYMENT OF
AIR FORCE CONTRACTING OFFICERS
AND ENGINEERING MANAGERS

THESIS

Richard A. Lheureux
Captain, USAF

AFIT/GCM/LSL/88S-7

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AN ANALYSIS OF CONFLICT OF INTEREST LAW AND THE
EFFECT THOSE LAWS HAVE ON THE POST-SERVICE
EMPLOYMENT OF AIR FORCE CONTRACTING OFFICERS
AND ENGINEERING MANAGERS

THESIS

Presented to the Faculty of the School of Systems and Logistics
of the Air Force Institute of Technology

Air University

In Partial Fulfillment of the
Requirements of the Degree of
Master of Science in Contracting Management

Richard A. Lheureux, B.A.

Captain, USAF

September 1988

Approved for public release; distribution unlimited

Preface

In the last 4 years, there have been four Reagan appointees investigated for violations of conflict of interest laws. With those well-publicized investigations has come a flurry of restrictions aimed at controlling what is perceived as a serious problem. Unfortunately, there has been very little research done which measures the problem.

The purpose of this thesis was two-fold. First, I wanted to do something to lift the fog surrounding the issue of post-employment conflict of interest. Second, I wanted to see what impact post-employment restrictions was having on the employment opportunities of retiring officers. How successful I was in those goals will be up to you. However, it is clear from my research that a great deal more research is needed. If the thesis program serves no other purpose, it does serve to encourage further areas of research. It is my hope that someone will continue this research.

In working on this project, I have accumulated several debts. I, like all my fellow students, owe a debt to Sgt Donald E. Gardner, Jr. His personal dedication to the students and their pursuits is inspiring. Further, I am indebted to Dr. Charles Fenno for his patient encouragement. Next, my biggest debt is owed to my advisor Dr. Robert "Boss" Wehrle-Einhorn. It was the "Boss'" confidence in the project that kept me going.

Finally, and most importantly, I owe my family. Without the loving support of my wife Jeanne and the understanding of my children, Autumn, Brea, and Sam, I would not have completed this research. To everyone my thanks, and to my family a promise to make it up to you in Boston.

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Abstract

The purpose of this study was to determine what affect post-employment conflict of interest law was having on incidents of conflict of interest. Further, this study surveyed active-duty Air Force contracting officers and engineering managers to determine whether post-employment restrictions were having an adverse affect on their post-service employment searches.

The study's findings can be summarized in four statements. First, no data was available which measured the extent to which private companies, doing business with the federal government, employ former Air Force officers. Second, no data was available which demonstrates the relationship of post-employment conflict of interest law and incidents of conflict of interest. Third, active duty Air Force officers lack information on the nature and extent of post-employment restrictions. As result, a majority of the officers tested in this study did not score well on basic knowledge test of post-employment restrictions. Finally, a majority of those officers surveyed felt post-employment restrictions are adversely affecting their post-service employment opportunities.

Among the recommendations included in the study is the recommendation for the Air Force to improve its post-service education programs. Specifically, it recommends that the Air Force provide separating and retiring members with

specific guidance on those restrictions which directly impact post-service employment. In addition, this study recommends that the Department of Defense (DOD) assume a leadership role in standardizing information collection techniques, particularly in those areas related to the post-employment activities of separating and retiring Air Force officers.

AN ANALYSIS OF CONFLICT OF INTEREST LAW AND THE
EFFECT THOSE LAWS HAVE ON THE POST-SERVICE
EMPLOYMENT OF AIR FORCE CONTRACTING OFFICERS AND
ENGINEERING MANAGERS

I. Introduction

Lawmakers are demanding tougher measures to police the parade of officers into defense firms they supervise. (Kittle, 1985:27)

Concerned that the integrity of the acquisition process was being jeopardized by the movement of former government workers into the defense industry, in 1978 Congress began increasing the restrictions on the post-service employment of federal workers. In the belief that that even the appearance of impropriety can seriously hurt public confidence and support, lawmakers have added to the statutory restrictions on post-service employment.

Opponents to post-employment restrictions maintain current restrictions do not fairly consider the impact of these restrictions on post-service employment opportunities. Further, many argue that post-employment restrictions reduce the benefit the federal government receives from having knowledgeable employees available in private industry to facilitate the federal acquisition process.

In an age where information is relatively easy to collect and process, there is a serious lack of information on the impact of post-employment restrictions. Proponents of stricter laws do not know whether further restrictions will significantly reduce post-employment conflict of interest. On the other hand, opponents of stricter post-employment restrictions are not sure how much benefit, if any, the federal government would receive by allowing the free movement of workers between federal service and private employment. Finally, neither side knows what impact post-employment restrictions has on the post-service employment opportunities of former federal workers. It was this lack of information that prompted this research.

This thesis has examined the relationship between conflict of interest and post-service employment of federal workers by defense contractors. In particular, it has studied the relationship between the post-service employment of Air Force contracting officers and engineering managers by defense contractors and incidents of conflict of interest. In addition, this study has looked at the impact of restrictive legislation on the individual's second-career search.

To accomplish these goals, several related research questions had to be addressed. First, it was necessary to develop an understanding of the existing statutory restrictions, who they apply to, and what consequences may await the violators of such statutes. Once these basic

questions were answered, an attempt was made to collect data that measured the trend in conflict of interest investigations and prosecutions. It was anticipated that investigations and prosecutions would help establish the connection between incidents of conflict of interest and trends in conflict of interest law.

In addition, information was gathered to measure the impact of post-employment restrictions on the employment searches of federal workers who are leaving federal service. Irrespective of the impact of these restrictions on curbing conflict of interest, it was postulated these restrictions are altering the employment searches of ex-federal workers. If so, that information would prove useful to lawmakers considering future legislation.

Specific Hypotheses Tested

1) There is a positive correlation between increased restrictions on the employment of retired Air Force officers and investigation/prosecution of these officers for conflict of interest.

2) In the opinion of Air Force officers, increased restrictions have adversely affected their post-service employment opportunities.

Scope and Limitations of This Study

This research was limited to a study of Air Force contracting officers and engineering managers. Since much of the recent legislation has been directed specifically at members of the Department of Defense acquisition community,

it was determined that the study sample would be taken from that group. From the larger population of the DOD acquisition community, Air Force contracting officers and engineering managers were selected. This sample population typifies a group most likely to be affected by post-employment restrictions.

Studying the effect on Air Force acquisition personnel may be especially appropriate when one considers the Air Force is on the leading edge of new weapons development. The Strategic Defense Initiative (SDI), the Advanced Technology Fighter program, and the B-2 (Stealth Bomber) program account for a significant portion of the defense budget. With contracting officers signing agreements that bind the federal government, and engineering managers responsible for the direction of major weapons acquisitions, this group represents a population with substantial influence on how defense dollars are spent.

I. Background

Chapter Overview

Nothing has caused the acquisition community more concern than the recent allegations of conflict of interest. With four high-level presidential appointees being investigated for alleged violations of conflict of interest law and the Justice Department reporting widespread corruption in the defense procurement system, the acquisition community faces what it perceives as a serious attack on its ethical credibility.

In the area of post-employment conflict of interest, proponents of stiffer laws have argued that current restrictions are insufficient and changes are needed if future abuses are to be avoided (Bennett, 1985:13). Whether new, more restrictive statutes will effectively deal with ethical misconduct remains to be seen. However, it is reasonable to suspect current legislation of being an ineffective response to the problem of post-employment conflict of interest.

Before passing judgment on the effectiveness of current post-employment restrictions, it is necessary to review the history of post-employment conflict of interest law. Further, it is necessary to develop a basic understanding of what activities have been restricted, who those restrictions apply to, and what penalties may be imposed when violations are found.

This chapter is divided into five major sections. The first section reviews the evolution of post-employment legislation, paying particular attention to the rationale behind the current restrictions. The second section summarizes those current restrictions, concentrating on restrictions which have a direct impact on the post-employment activities of former military officers. Throughout this section, judicial interpretation has been included to help explain the language of particular statutes. The third section examines studies performed by the General Accounting Office (GAO). These GAO studies are of particular interest because federal officials, particularly members of Congress, have used these studies in determining which direction new laws should follow in order to respond to post-employment problems. The fourth section reviews a few of the concerns of those opposed to post-employment restrictions. The chapter concludes with a discussion of the key areas of concern with respect to the current approach to restricting post-employment activities of former federal employees.

History

Federal conflict of interest restrictions have been around for over 100 years. The first Congressional debates over the issue of post-service employment occurred as early as 1853. Investigating potentially harmful post-service conduct, Congress became concerned that former employees would rely on special "inside knowledge" gained while in

federal employ to bring claims against the government once they left federal service. Three specific concerns were expressed in those early debates:

(1) Some were worried about the problem of inside information - in particular the possibility of fraudulent claims brought by a former employee with inside knowledge about a claim and its weakness;

(2) Others, exhibiting an essentially adversary concept of the claims process, were concerned to save money for the treasury and to prevent the treachery of switching sides. Senator Cragin of New Hampshire, for example, was worried at the financial success of a clerk in the Post Office Department who, having access to the files, discovered that many former postmasters were owed back pay by the government, though few of them knew it, and who circularized the potential claimants offering his collection services; and,

(3) Finally, there were those who thought the question was one of continuing personal influence. (Manning, 1961:180-1)

After 20 years of deliberations, in 1872 Congress enacted 5 U.S.C. Sec 99. Section 99 was designed to address the issue of former employees bringing claims against the government (Manning, 1961:183). Section 99 read:

It shall not be lawful for any person appointed as an officer, clerk, or employee in any of the departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments, while he was such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee. (Manning, 1961:213-14)

However, two flaws were to surface as agencies attempted to enforce Section 99.

First, Section 99's coverage was limited to employees of 'departments'. As used in 1872, 'departments' referred to the seven cabinet level offices. Consequently, the Attorney

General concluded that those not specifically assigned as employees of the 'departments' were not covered by Section 99. As World War I came to an end, this limited interpretation was going to prove significant.

In its short-notice reaction to the demands of World War I, many government agencies had side-stepped traditional peacetime procurement policies in order to accelerate the deliveries of needed war materials. As a result, the government found itself faced with thousands of post-war contract claims. Capitalizing on their in-service experience, "[several] former Army contracting officers had gone into business as attorneys and agents in the prosecution of these supply claims (Manning, 1961:183-184)."

The participation of ex-military officers in the claims settlement process presented a new dimension to the problem of post-employment conflict of interest. Seeking guidance, in 1919 the Secretary of War asked the Attorney General for an opinion on the applicability of Section 99 to Army officers. In his response, the Attorney General replied:

In his [the Attorney General's] opinion, the Army was not part of the War Department. It was a separate establishment supervised by the War Department. Army officers as such were not employees of a 'Department' and were not, therefore, covered by Section 99. (Manning, 1961:184)

The second aspect of Section 99 which requires further explanation is that Section 99 provided no penalty for those who violated the restriction. According to Senator Bayard of Delaware: 'the real cure of the evils of improper claims . . . must be found in the integrity of the officers of the

department (Manning, 1961:183). When asked what would be done if the statute was violated, Senator Bayard replied he could not "imagine that a person would attempt to act in the face of an official pronouncement of illegality (Manning, 1961:183)."

The Secretary of War was disappointed both with the limited interpretation of the Attorney General, and with the lack of sanctions. In his disappointment, the Secretary turned to Congress. Congress reacting to the Secretary's request; and, late in 1919 Section 99 was revised. However, Congress failed to include ex-military officers in the revision. It was not until the issue resurfaced during World War II, that Congress would make a serious attempt to deal with the post-employment activities of former military officers.

Needing to attract professional people into government service, the government sought to balance its need for highly qualified professionals against its need to protect the public from the unscrupulous attempts of ex-employees to capitalize on information gained while in the government's employ. The product of this balancing act was a rider on the Renegotiation Act of 1942.

The Renegotiation Act of 1942 exempted all employees appointed by the Secretaries of War, Navy, and Treasury from the post-service restrictions of Section 99 (Manning, 1961:184). However, the revision to Section 99 did stop any such employee from bringing claims against the United States

arising from any matter with which he/she was directly connected while in office (56 Stat. 985 (1942)). This was a subtle, yet significant change in the nature of post-employment restrictions.

For the first time, members of the military services were included in the restrictions. Further, the prohibition was permanent and depended on the existence of a 'direct nexus between the officer's work and the claim' (Manning, 1961:185).

After a few attempts to adjust the language of the Renegotiation Act of 1942, in 1948 Congress abandoned these statutes in favor a new piece of legislation. Passed as 18 U.S.C. Section 284 (hereinafter referred to as section 284), it was a marriage of Section 99, the revisions introduced by the Renegotiation Act of 1942, and the Contract Settlements Act. As revised in 1958, Section 284 read as follows:

Whoever, having been employed in any agency of the United States, including commissioned officers [emphasis added] assigned to duty in such agency, within two years after the time when such employment or service has ceased, prosecutes or acts as counsel, attorney or agent for prosecuting any claim against the United States involving any subject matter directly connected with which such person was so employed or performed duty, shall be fined not more than \$10,000 or imprisoned not more than one year, or both. (18 U.S.C. Sec 284 (1958))

With the passage of section 284 came two important aspects of post-service conflict of interest law: 1) a criminal law which expressly included former commissioned officers and 2)

specific and sizable sanctions for violation of the restriction.

The final step leading to the current status of post-service conflict of interest law was taken in 1977 by President Carter. President Carter proposed a three part program designed to require: 1) complete financial disclosure; 2) creation of an office of ethics; and 3) strengthened restrictions on the post-employment activities of government officials (Hunt, 1985:4). Later passed into law as the Ethics in Government Act of 1978, this legislation served as the basic outline for modern post-employment conflict of interest law.

As it specifically impacts ex-military officers and other members of DOD, the Ethics in Government Act made changes to the language and spirit of several titles of the United States Code (U.S.C.). First, 10 U.S.C. 2397 was changed to require federal employees to notify government officials (specifically ethics representatives) when they had been contacted by private sector firms about future employment opportunities. Next, 18 U.S.C. Sec 207 was changed to prohibit involvement of former government employees in activities they were "personally and substantially" involved with while in office (18 U.S.C. 207(a)). Further, former employees were restricted for two years from being involved with issues which they came into contact with as part of their former "official responsibilities" 18 U.S.C. Sec 207 (b). Finally, senior

employees were restricted for one year from almost all contact with their former organization (18 U.S.C. Sec 207 (c)).

Current Status of Post-Employment Restrictions

Groups Affected by Post-Employment Restrictions.

There are five groups which are affected in some way by post-employment restrictions:

- a) Civilian employees of the executive branch;
- b) Active duty officers above the pay grade of O-3;
- c) Former civilian employees of the executive branch;
- d) Former commissioned officers of the military services; and,
- e) Contractors who do business with the Department of Defense (DOD).

In addition to these major groupings, further distinctions are made within the United States Code (U.S.C.), depending on the activity restricted.

For example, in 10 U.S.C. 2397a, where 'covered defense officials' are required to report any contact by defense contractors where that contact concerned future employment, those covered are described:

(A) as a civilian officer or employee of the Department of Defense in a position for which the rate of pay is equal to or greater than the minimum rate of pay payable for grade GS-11 under the General Schedule, or;

(B) on active duty in the armed forces in a pay grade of O-4 or higher. (10 U.S.C. 2397a (a)(2))

On the other hand, the 2 year prohibition on the participation of former defense officials in procurement

matters they were connected with during their last 2 years of service (10 U.S.C. 2397b) does not apply to any duties performed while a person was serving -

(A) in a civilian position for which the rate of pay is less than the minimum rate of pay payable for grade GS-13 [GM-13] of the General Schedule; or

(B) as a member of the armed forces in a pay grade below O-4; (10 U.S.C. 2397b (c)(1))

These group distinctions exist throughout the post-employment restrictions. In 10 U.S.C. 2397c, contractors who have a single contract for more than \$100,000 are prohibited from compensating anyone who is covered under 10 U.S.C. 2397b. Further, contractors who during the preceding fiscal year did more than \$10 million in business with the Department of Defense (DOD), are required to submit a report to DOD listing those former DOD employees who have worked for them in the last year.

Finally, distinctions involving former military members are discussed in 18 U.S.C. 207, 281, and 37 U.S.C. 801(c). Section 207 (a), which restricts former employees from being involved in matters in which they participated "personally and substantially" while assigned to DOD, only applies to "former commissioned officer of the military services." (See 18 U.S.C. 202 for the definition of those covered under 18 U.S.C. 207.) In 18 U.S.C. 207(c), the restrictions only apply to those officers described as "senior officials". A flexible reference, "senior officials" is not specifically defined in this statute. Generally it refers to officers above the pay grade

of O-8 (Air Force rank of Major General). However, it can also include to O-7s and O-8s if they held active duty positions which placed them in high-level decision-making positions as designated by the Director of Government Ethics (18 U.S.C. 207 (d)(1)(C)). Lastly, 37 U.S.C. 801(c) only restricts retired "regular" officers from selling war supplies to the Department of Defense (DOD).

In conclusion, it should be understood that post-employment restrictions apply in different ways, to different groups of former employees. Understanding which restrictions apply, how they apply, and what are the penalties for violation requires an examination of the restrictions themselves.

The Post-Employment Restrictions. Post-employment restrictions fall into two broad categories: 1) those that specifically restrict or prohibit employment; and, 2) those that require the covered group to report. The latter will be discussed first.

Reporting Requirements. According to 10 U.S.C. 2397a, an individual must report promptly to either their supervisor, or the designated ethics official, when he/she has contacted, or been contacted by a contractor about future employment with that contractor (10 U.S.C. Sec 2397a (b)(1)). This requirement only applies if the individual has also participated in the performance of a "procurement function" involving that same contractor. Further, the individual shall -

(B) for any period for which future employment opportunities for the covered defense official have not been rejected by either the covered defense official or the defense contractor, disqualify himself from all participation in the performance of procurement functions relating to contracts of the defense contractor. (10 U.S.C. Sec 2397a (b)(1)(B))

10 U.S.C. 2397a (a)(6) defines 'procurement function' as:

(A) the negotiation, award, administration, or approval of the contract;

(B) the selection of a contractor;

(C) the approval of changes in the contract;

(D) quality assurance, operation and developmental testing, the approval of payment, or auditing under the contract; or,

(E) the management of the procurement function.

An individual is not required to report initial contact. However, if additional contact of the same nature is made, either by the individual or by the contractor, then the individual must report all contact he/she has had with that contractor for a period of 90 days beginning with the date of the initial contact (10 U.S.C. 2397a (b)(2)).

The only other relevant reporting requirement is found in 10 U.S.C. 2397c. Contractors who have done more than \$10 million dollars of business with the Department of Defense in the previous calendar year are required to report the employment status of any former DOD employee who has worked from them during the previous calendar year (10 U.S.C. 2397c (b)(1)(A)). The report must contain detailed information which describes: 1) the jobs the individual may of held during their last 2 years with DOD; 2) the weapons systems

the individual may have worked on during their last 2 years with DOD; 3) any work that the individual is performing on behalf of the contractor; and, 4) each major defense system on which the individual has performed work on behalf of the contractor. The contractor must submit this detailed report not later than 1 April of the year following the year reported on (10 U.S.C. 2397c (b)(1)(A)).

While reporting may be a burden for some, objections to reporting are rare. Complaints about the restriction of post-employment activities, usually refer to the employment prohibitions. Those prohibitions are discussed in the next section.

Prohibitions. Post-employment restrictions fall into one of three general categories: 1) restrictions based on the activities of the individual while he/she was on active duty; 2) restrictions which are based on the position held by the individual while he/she was on active duty; and, 3) restrictions which are based post-employment selling activities of the former officer. Each general category introduces a unique aspect to the overall subject of post-employment conflict of interest. Consequently, the categories are discussed separately below.

Prohibitions Which Are Based on the Active Duty Responsibilities of the Former Officer. According to 10 U.S.C. 2397b, a former officer may not accept any compensation from a contractor if one of three conditions is met: 1) the individual is employed by a contractor at a site

where he/she spent the majority of his/her working time for the last two years of service; 2) the individual is working on a major defense system that he/she spent the majority of his/her working time for the last two years of service on and that system's contract is held by the contractor; or, 3) he/she acted the primary representative for the United States in the negotiation of either a contract or claim in an amount in excess of \$10 million which involved the contractor (10 U.S.C. 2397b (a)(1)). This restriction is for 2 years, and begins on the date the individual separates from the service.

Unique to 10 U.S.C. 2397b (discussed above), is the fact that this section provides members with a way to avoid the unpleasanties that come with a violation. Before accepting employment with a contractor, the former member can request advice from the designated ethics official. The official has 30 days from the date the request is made to provide the requester with a written opinion on the applicability of 10 U.S.C. 2397b to the anticipated employment (10 U.S.C. 2397b (e)(3)). If the designated ethics official finds that this section is not applicable to the anticipated employment, then there is a conclusive presumption in favor of such person. By granting a conclusive presumption, the government declares that the anticipated employment is not a violation under 10 U.S.C. 2397b (10 U.S.C. 2397b (e)(4)).

The other statute which bases its restrictions on the the nature of the work performed by the former officer while he/she was on active duty is 18 U.S.C. 207(a). Section 207

(a) prohibits the individual covered from acting as an -

agent or attorney or otherwise represent any other person (except the United States)', in any formal or informal appearance before, or, with the intent to influence, makes oral or written communication on behalf of any other person (except the United States) to -

(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, an any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) in which he participated personally and substantially [Emphasis added] as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advise, investigation or otherwise . . . (18 U.S.C. 207 (a))

According to a guide published by the 9th Air Force's Staff Judge Advocate's Office, participating 'personally and substantially' means:

. . . that you are actively engaged in handling a contract matter or claim, judgment, etc., with that firm. It could cover such situations as negotiating the contract, negotiating change orders and supplemental agreements, pricing the contract or changes and supplemental agreements, inspecting or approving work performed by the firm, negotiating settlements of claims or disputes with the firm, or making frequent contacts with the firm - - in person, by telephone or by correspondence - - on behalf of the Government. (Mills, 1985:5)

On the other hand, in Brown v BZA (486 F.2d 39) the court addressed a related issue: whether the subject matter of

the communication was 'substantially' the same as the individual's prior involvement:

. . . any substantial relationship [that] can be shown between the subject matter of the former representation and that of a subsequent adverse representation, the latter will be prohibited. (p.42)

These views reflect two aspects of the same problem.

First, the personal activity of the individual must be examined. If it is concluded that the individual was personally and substantially involved with the subject matter under review, then the courts must also examine the subject matter to determine whether the subject matter itself relates 'substantially' to the subject matter under the individual's control while still serving with the Department of Defense.

Therefore, the reference in Section 207 to 'personal and substantial' participation includes both the 'personal and substantial' participation of the individual (9th Air Force JAG's interpretation) and the substantial relationship in subject matter (Court's opinion in Brown v. BZA).

Prohibitions Based on the Position Held by the Former Officer. In addition to those restrictions which are based on kind of work the individual was engaged in before leaving federal service, two sections which specifically restrict the post-employment activities of the covered individuals are based on the position those individuals held while in federal service. First, 18 U.S.C. 207 (b) places a two-year prohibition on the individual's participation in those activities which fell under the individual's 'official responsibility' while in

service. According to Section 207 (b), any individual who knowingly acts as an 'agent, attorney, or otherwise represents' anyone other than the United States in a matter

- (i) which was pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or in which he participated personally and substantially as an officer or employee; . . . (18 U.S.C. 207 (b)(3))

shall be considered in violation of 18 U.S.C. 207.

While there is a similarity between this restriction and the restriction found in 18 U.S.C. 207 (a), there is also a significant difference. In Section 207 (a), there is an implied requirement that the individual have actual 'hands on' contact with the matter under review. However, in Section 207 (b) there is no requirement 'for hands' on activity, official responsibility refers to the authority vested in the head of an office, branch, division up the organizational chart (Cohen, 1986:57). That suggests that an agency head, for example, has 'official responsibility' for all agency actions, just as do his/her deputies have for their respective divisions. Therefore, the restriction is based on position rather than activity.

Next, 18 U.S.C. 207 (c) places restrictions on those designated as 'senior officials'. This restriction only applies to those retired military officers above the military pay grade of O-8 (Air Force rank of Major General). Section 207 (c) prohibits the individual from virtually all forms of contact with his former agency. Except for informal, non-

business contacts, the individual must stay away from the agency for one year.

Finally, in a related issue 18 U.S.C. 207 (g) restricts the relationship between retired officers and government employees still actively employed by the Department of Defense. Specifically, this section limits the retiree who is a partner with the active duty employee from representing anyone other than the United States, where the United States has substantial interest in the matter. This prohibition includes both matters where the retiree had "personal and substantial" involvement, and those matters where the active duty employee has "personal and substantial" involvement (18 U.S.C. 207 (g)).

Prohibitions on the Sale of Supplies and War Materials to DOD. The final category of restrictions is based on the sale of supplies and war materials to the Department of Defense (DOD). According to two statutes in the United States Code (18 U.S.C. 281 and 37 U.S.C. 801 (c)), a former officer can not sell supplies or war materials to the Department of Defense. While these statutes share the prohibition on sales, they also differ in the extent of their coverage.

18 U.S.C. 281 prohibits retired military officers for two years from: "selling to the military department from which the officer retired from (18 U.S.C. 281 (b)(1))." Further, it restricts the retired officer for two years, from representing anyone, other than the United States, in

prosecuting a claim. The two year limitation begins the day the individual is released from active duty.

In contrast, 37 U.S.C. 801 (c) prohibits such selling by 'regular' officers and selected retired civilians. Section 801 (c) restricts the covered officer for 3 years from the date his/her name is placed on a retired list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Services. Therefore, Section 801 (b) places a longer restriction, on a different group of people, than does Section 281.

The critical question at this point is: 'What constitutes 'selling'? Since there is no statutory definition found in either Section 281 or Section 801(c), this study relied on the precedential descriptions collected by the Staff Judge Advocate for 9th Air Force, 'selling' is described as:

- All activities the direct purpose of which are to 'sell' any supplies or war materials to any agency of the Department of Defense. (38 CG 470, 473 (6 Jan 59))
- Activities calculated to induce the purchase of supplies and materials, even though the mechanical acts of actually consummating sales or negotiating sales or contracts for sales may be done by another person, must be viewed as coming within the scope of the statutes and hence as subjecting the retired officer concerned to the prohibition described. (38 CG 470, 473 (6 Jan 59))
- Selling means (1) signing a bid, proposal, or contract, (2) negotiating a contract, (3) contracting an officer or employee of the Department of Defense for the purpose of (i) obtaining or negotiating contracts, (ii) negotiating or discussing changes in specifications,

price, cost allowances, or other terms of a contract;
(4) settling disputes about performance of a contract;
or (5) any other liaison activity with a view toward the
ultimate consummation of a sale even though the actual
contract thereof is subsequently negotiated by another
person (DOD 5500.7 (19 Jan 79)) [Mills, 1985:12-13]

Penalties Which Can Be Assessed Against Violators.

Penalties to be assessed against violators of post-employment restrictions range from simple administrative actions to the imposition of criminal sanctions. Along the way, the violator may simply incur an interruption in his/her retirement pay; or, he/she may face fines up to \$10,000 and imprisonment for up to 2 years. Which sanction is ultimately imposed depends on the violation and the court.

Administrative penalties range from fines to loss of retirement benefits. In 10 U.S.C. 2397a, a person who fails to report contact with a defense contractor may be subject to an administrative penalty not to exceed \$10,000. Imposed by the Secretary of Defense, the penalty is subject to judicial review. In 10 U.S.C. 2397c, a contractor may be assessed as much as a \$100,000 penalty for hiring an individual who was specifically prohibited from accepting such employment under 10 U.S.C. 2397b (a)(1).

As for criminal sanctions, the statutes remain fairly consistent. Violations under 18 U.S.C. 207 (a), (b), and (c) can result in criminal fines of up to \$10,000 or imprisonment for up to 2 years, or both. Further, violators of 18 U.S.C. 207 (g) may be fined not more than \$5,000 or imprisoned for not more than one year, or both. Finally, in

18 U.S.C. 281, there is no specified amount to the fine; but, the statute does say the individual may be fined or imprisoned for not more 2 years, or both.

Summary of Restrictions. The total impact of post-employment conflict of interest laws is hard to measure. On the other hand, the number and kinds of restrictions is not. Tables 1, 2, and 3 have been provided as a summary of these restrictions. Each table applies to a specific category of retired or separated employee. Those categories are contained in the title block of the table.

Table 1: Summary of Applicable Restrictions
(Former Officers)

Law	Restricted Activity	Length of Restriction	Penalties
10 U.S.C. 2397a (Applies to active duty)	Report Contact with Contractor about future employment.	On Going	\$10,000 (Administrative)
10 U.S.C. 2397b (O-4 and Above)	Report Contact with a contractor where one worked in his facilities or one worked on a major defense system with that contractor the majority of his time within 2 years of separating.	2 years after separating	\$10,000 (Administrative)
18 U.S.C. 207(a)	Do not Act as agent or attorney for anyone other than U.S. if government is a party to the action.	Permanent Bar	Maximum 2 yrs imprisonment and \$10,000 fine

Table 1: Summary Of Applicable Restrictions - Continued
(Former Officers)

Law	Activity	Length of Restriction	Penalties
18 U.S.C. 207(b)	Do not act personally as agent or attorney on matter personally and substantially involved with while in service	2 years after termination of official responsibility	Maximum 2 yrs imprisonment and \$10,000 fine
18 U.S.C. 281	Do not sell or represent any person in selling.	Permanent Bar	Maximum 2 years imprisonment \$10,000 fine, and loss of right to hold federal office
(Adapted From Appendix 1, <u>Standards of Conduct for the Retired Officer</u> HQ 9th Air Force, Shaw AFB, SC: 1985)			

Table 2: Additional Restrictions Affecting Regular Officers

Law	Restricted Activity	Length of Restriction	Penalties
37 U.S.C. 801(c)	No Selling or contracting to sell supplies.	3 years	Loss of retired pay for the period of selling and/or the length of any contract entered into as the result of selling.
<p>PLUS</p> <p>ALL THOSE RESTRICTIONS WHICH APPLY TO FORMER OFFICERS (See Table 1)</p>			
<p>(Adapted From Appendix 1, <u>Standards of Conduct for the Retired Officer</u> HQ 9th Air Force, Shaw AFB, SC: 1985)</p>			

Table 3: Additional Restrictions Affecting Senior Officers

Law	Restricted Activity	Length of Restriction	Penalties
18 U.S.C. 207 (c)	No Contact relative to business.	1 year	Maximum 2 yrs imprisonment and/or \$10,000 fine.
<p>PLUS</p> <p>ALL THOSE RESTRICTIONS WHICH APPLY TO FORMER OFFICERS (See Table 1 Above)</p>			
<p>(Adapted From Appendix 1, <u>Standards of Conduct for the Retired Officer</u> HQ 9th Air Force, Shaw AFB, SC: 1985)</p>			

GAO Findings on Post-Employment Conflict of Interest

In the last 3 years, the General Accounting Office has conducted several studies on the issue of post-employment conflict of interest. Of those studies, four were of particular relevance:

<u>Title</u>	<u>Published</u>
<u>Many Former Personnel Not Reporting Defense-Related Employment</u>	March, 1986
<u>Relationships Between Work at DOD and Post-DOD Employment</u>	July, 1986
<u>Post-DOD Employment May Raise Concerns</u>	April, 1987
<u>Results of Conflict of Interest Investigations</u>	February, 1988

These studies addressed specific aspects of post-employment conflict of interest. Consequently, we will examine them one at a time, pay close attention to: 1) the purpose of the study; 2) what GAO found; and 3) what questions or inconsistencies were raised by the study.

First Study: Many Former Personnel Not Reporting Defense-Related Employment (March, 1986). The purpose of this study was to measure how many former federal employees were complying with the requirements of 10 U.S.C. 2397 (1982). Specifically, GAO listed three goals of the study:

[1] -- determine the completeness and accuracy of information reports required by 10 U.S.C. 2397;

[2] -- suggest improvements to DOD's process for compiling and reviewing submitted reports, and

[3] --determine the extent to which former DOD personnel are aware of restrictions on post-government employment. (GAO, 1986(a):1)

GAO surveyed 5,844 former DOD employees who were currently working for major defense contractors. The GAO findings can be summarized as follows:

1. Only 30% of those required to file reports in fiscal year 1983 did so. (GAO, 1986(a):3)
2. Of the 85 disclosure forms reviewed, 38 only contained job titles and the remainder contained job descriptions without sufficient information to make a judgment on whether or not conflict of interest might exist. (GAO, 1986(a):24-26)
3. The services and Defense agencies give the completed forms only limited review because (1) the information is too general to be of value in detecting possible conflicts of interest and (2) written guidance on what to look for to identify possible conflicts of interest is generally lacking. (GAO, 1986(a):4)

Consequently, GAO found that a main source for collecting information on former employees, the disclosure form, was not providing the data needed to track former employees.

The study also raised questions concerning coverage of post-employment conflict of interest law. GAO found that because of the limited coverage of the statute (See the section on coverage above), a significant portion of the universe population could not be considered in their study. Of the 11,992 who met the rank requirements of 10 U.S.C. 2397, less than 50% were required to report because they did not work for a major defense contractor (GAO, 1986(a):15).

While these shortcomings were partially corrected in the 1987 amendment of Section 2397, one begins to suspect that it would impossible to accurately determine the number of former federal employees who are currently working for defense contractors. Without an accurate gauge of the post-service employment activities of former federal workers, it might prove difficult to determine the relative size of the post-employment conflict of interest problem.

Second Study: Relationships Between Work at DOD and Post-DOD Employment, (July, 1986). The purpose of this report was to determine the extent that former Department of Defense (DOD) personnel work for defense contractors on the same projects or programs they worked on while with DOD (GAO, 1986(b):1). GAO also studied the reactions of former DOD employees to the post-employment restrictions.

The findings of this investigation fall into three categories: 1) statistical information on the demographics of those former DOD employees currently working in the defense industry; 2) the reactions of the former DOD employees to the restrictions placed on their post-employment activities; and, 3) the opinions of former DOD employees on the whether their DOD responsibilities affected defense contractors.

Of the 5,755 in the population studied, 4,417 had been military (77%). Of those, 4,148 (94%) had been mid-level managers (O-4 through O-6). Of 1,641 former civilian employees surveyed 1,546 had been mid-level managers (GS-13

through GS-15). In determining the study universe, GAO relied on records obtained from the Defense Manpower Data Center. GAO also used industrial security clearances to determine whether former employees were working for defense contractors.

Next, GAO found that ex-employees had strong opinions about the impact of these post-employment restrictions. Ninety-six (96) percent of the respondents felt that the movement of former DOD employees into the defense industry was advantageous to the defense contractor. Further, 90 percent felt the movement was advantageous to DOD (GAO, 1986(b):16). As to imposing additional restrictions, 63 percent opposed additional restrictions (GAO, 1986(b):19).

Finally, GAO reported its findings on the amount of contact former DOD employees had with DOD projects. GAO reported that 73 percent had some degree of responsibility while at DOD which they viewed as affecting their subsequent employer - 40% viewed their responsibilities as substantial (GAO, 1986(b):2). Further, GAO projected 82 percent had work-related communications with DOD officials, and 45 percent had such communications with DOD officials with whom they had earlier worked (GAO, 1986(b):2).

Third Study: Post-DOD Employment May Raise Concerns
(April, 1987). This report expanded on the findings of the July, 1986 report above, and had the same overall purpose: to determine how often former DOD personnel work for defense

contractors on the same projects they worked on while with DOD (GAO, 1987:1).

In this study, GAO relied on the results of its stratified random sample of 767 former DOD employees. Eighty-seven (87) percent (668) of those who were sent the survey, responded. GAO concluded that each strata was well enough represented to project results (GAO, 1987:7).

GAO stated that the information developed was not intended to identify specific statutory or administrative improprieties. However, it did state that the information showed:

. . . that some individuals leaving DOD and going to work for defense contractors may give the appearance of (1) not having acted in the best interests of the government because they viewed a defense contractor as a potential employer; (2) taking advantage of insider contacts to the detriment of the government; or (3) influencing contract decisions to obtain later employment [GAO, 1987:11].

GAO estimated that 21 percent of the respondents currently had responsibilities similar to those they had while working for DOD (GAO, 1987:14). Further, GAO estimated that 26 percent had responsibilities at DOD which affected their subsequent employers (GAO, 1987:13).

A significant study, this study is the first study to attempt to measure the number of former DOD employees working in defense industries. While this report reflects limitations similar to those encountered in the July, 1986, GAO study, i.e., limited study universe, it does provide the first real estimate of the number of former employees who

might be in a position to violate post-employment prohibitions.

Fourth Study: Results of Conflict of Interest Investigations (February, 1988). This study was conducted in response to a Congressional request for GAO to gather statistics on federal agencies' enforcement of criminal laws involving ethical misconduct of federal employees. To accomplish its goal, GAO gathered statistics from 10 Offices of Inspectors General (OIG). Absent from that list of OIGs was the Department of Defense. Because DOD does not classify conflict of interest violations on the basis of the statute involved, the GAO investigators were unable to gather statistics relevant to individual violations. Therefore, DOD was not included in the survey.

The most significant result of this investigation was that of the 304 violations reported to the OIGs, only 2 were prosecuted by the Justice Department. Of those two prosecuted, only one conviction resulted. That conviction was based on restrictions found in 18 U.S.C. 208 (GAO, 1988:8). No prosecutions were disclosed to have been based on statutes relevant to this study.

Opponents of Conflict of Interest Legislation

On the other side of this issue, opponents of post-employment restrictions argue that the restrictions are not judiciously applied (Hunt, 1985:1). Opponents maintain that post-employment restrictions do little to stop the "peddling of influence", rather they serve to make it impossible for

former employees to employment in the area they have spent years gaining experience (Hunt, 1985:2). Consequently, opponents to post-employment conflict of interest laws seek a different balance between the protection of the public good and preservation of the employee's freedom to pursue a livelihood.

Opponents to these restrictions also maintain that current legislation overlooks the benefit that the government receives by allowing the free movement of employees between the federal government and the private sector. Testifying before the Congressional subcommittee responsible for investigating the alleged violations of conflict of interest law by former Deputy Under Secretary of Defense Mary Ann Gilleece, Chapman B. Cox, General Counsel for the the Department of Defense, made the following statement:

In conclusion, let me assure you [the Subcommittee] that the Department of Defense shares your desire to maintain the Department's integrity. But it is important that legislative action be no more sweeping than necessary. There is a substantial movement among competing organizations. The exchange of ideas and experience generally is beneficial. We often find it advantageous in our programs to bring people into the Department for limited periods to capitalize on their background experience. Overall, we believe that the movement of the individuals between Government and industry is far more beneficial to the Government than it is detrimental. And we find [in] real instances of corruption or actual damage, the [existing] law provides adequate remedies. (Cox, 1985:123)

The final, and strongest, argument made by opponents of the current post-employment restrictions is that no one really knows to what degree the employment of former

federal workers by defense contractors presents a threat to the government's interests. Hunt, in a paper prepared as partial fulfillment of his requirements for the Industrial College of the Armed Forces, feels lawmakers have moved too quickly, adopting restrictions before they really know the scope of the problem (Hunt, 1985:31). The GAO study of 1988 reported they could not measure the enforcement practices of the Department of Defense because DOD does not maintain its records in a form that would facilitate their investigation. Perhaps the only common ground in the issue of post-employment conflict of interest, is the call for information. Both proponents and opponents of further restrictions are anxious to find statistical support for their respective positions. Unfortunately, that information does not seem to exist.

Conclusions and Closing Comments

This has been a relatively brief review of the past and present of post-employment conflict of interest law. In spite of the its relative brevity, this review has surfaced three ideas which seem to have consistently appeared in our investigation. First, the latest revisions of post-employment conflict of interest laws are the most restrictive in the nations history. Second, studies performed by the General Accounting Office (GAO) have failed to disclose the magnitude of the problem. Third, those who oppose the current trend towards more restrictive standards are fearful that their chances to earn a living in their chosen

profession after leaving government service are growing steadily worse. From these three ideas, it is evident that a serious information void exists in the area of post-employment conflict of interest.

It was anticipated that by examining the relationship between post-employment conflict of interest restrictions and the hiring practices of the defense industry we might discover an appropriate direction for any future restrictions to take. If our examination failed to confirm a relationship between the hiring of former federal workers and post-employment conflict of interest, then further restrictions would appear to be inappropriate. However, if a relationship were demonstrated, the trend towards more restrictive statutes would be the appropriate response to the problem of post-employment conflict of interest.

This research also sought information that would reflect the effects of post-employment restrictions on the post-service employment search of federal workers. In addition to lacking information on the relationship of conflict of interest and the hiring practices of the defense industry, there was a lack of information on the impact of post-employment restrictions on the second-career opportunities of federal workers. Opponents to post-employment restrictions have argued that these restrictions are hurting their post-service employment opportunities. If this is so, then it would be useful for lawmakers to know, what it is about the restrictions that is causing the employees the most concern.

III. Research Procedures

Chapter Overview

Chapter III describes the research procedures used to meet the research objectives and to test the hypotheses posed in Chapter I. First, this chapter describes those methods used in an attempt to secure detailed data on the frequency of post-employment investigations and prosecutions within the Department of Defense (DOD). Second, this chapter outlines the survey conducted, including: 1) the sample population; 2) selection of the sample size; 3) methods of collection; 4) survey preparation; and, 5) statistical methods used to analyze the survey data.

Research Procedures

Gathering Data on DOD Investigations of Post-Employment Conflict of Interest. Obtaining the data necessary to test the relationship between increased incidents of conflict of interest and the employment of former Air Force officers by the defense industry, was reasonably straight-forward. Since the information needed for the statistical analysis depended on data that could be extracted from DOD's investigation database, contacting the Department's Office of Inspector General was all that was needed. Contact was made. The results of that contact are reported in Chapter IV.

Gathering Survey Data. In order to answer specific questions which relate to the impact of the post-employment restrictions on the second-career searches of Air Force officers, a two step survey approach was taken. First, an independent survey was prepared to measure the attitudes and opinions of those officers in specified career fields who currently have more than 19 and half years of military service.

This sample group was selected because it was anticipated that those who are nearing retirement would be actively reviewing their employment options. Since retirement from the Air Force is possible, it was thought that this group would be including civilian employment in their list of options. In their review of civilian employment options it is reasonable to believe these 'pre-retirees' would be weighing the impact of post-employment restrictions on their post-service employment opportunities. Consequently, this group was selected because it was determined that they would have the best overall understanding of the implications of post-employment restrictions.

Next, data collected was compared to the results of a similar survey conducted by the General Accounting Office (GAO) in 1987. This comparison was used to validate specific items common to both surveys. Further, the comparison of thesis results and GAO results was used to see if the

respondents' attitude on post-employment restrictions varied significantly from those of former DOD employees.

Justification of the Survey Method

Emory describes the strengths of the survey as 'versatility, efficiency, and economy' (Emory, 1985:158). For those reasons, a cross-sectional survey (questionnaire) with a random sample was used to collect the primary data used in this thesis.

Operational research experts, Fink and Kosecoff, consider surveys as an effective method of collecting data intended to measure opinions and attitudes (Fink and Kosecoff, 1985:7). The opinions and reactions of Air Force officers soon to be affected by post-employment restrictions was of particular importance to this research. Consequently, it was decided that a survey was the best research procedure to use to gather the needed data.

The Survey Method

Sample Selection. The target population for this survey was defined as: 'all Air Force contracting officers and engineering managers most likely to be affected within the next six months by post-employment restrictions.' Therefore, the characteristics of the population can be described as:

- a) Commissioned Air Force officers;
- b) With over 19 and half years of active duty service;
- c) In the career fields: 65xx, 27xx, 28xx; and,

d) In the pay grades O-4 to O-6.

The decision to limit the study was briefly discussed in Chapter I (See page 4).

The specific sample group was developed through the cooperation of information specialists at the Air Force Military Personnel Center (MPC) in San Antonio, Texas (HQ AFMPC/DPMARR3). MPC provided a roster with the names and addresses of 1044 contracting officers and engineering managers. Dated 18 April 1988, this roster served as the universe population from which the sample population was taken. The sample survey included officers from all major commands. Further, the sample included members from all levels of the acquisition community. The total number of officers contacted was 250. A sample size of 250 with a rate of return of at least 50% would yield a confidence level of $95\% \pm 4\%$. Sampling a larger portion of the roster would not add significantly to the value of the data collected.

Questionnaire Development. A questionnaire with 32 questions was used to measure the attitudes and opinions of the sample group. It was designed to: 1) collect opinions and attitudes; 2) measure how much the participants actually knew about the restrictions affecting their post-service employment; and, 3) provide data that could be compared with the results of specific GAO studies conducted in 1986 and 1987.

The questionnaire had five sections. The first section collected demographic data on the participants. Eleven

questions categorized respondents by career field, military rank, and acquisition experience. In addition, data was collected that was used to scale the relative influence of the respondent on the acquisition process.

Next, a section collected opinions which measured how well the Air Force has done in getting the respondent information on current post-employment restrictions. Specific questions were drafted to measure the respondents' reactions to statements made about Retiree Affairs, the judge advocate's office, and the Air Force in general. These questions were then analyzed. It was anticipated this analysis would provide an overall impression of the Air Force's post-employment education efforts.

The third section of the survey measured what respondents perceived as the impact of post-employment restrictions on their post-service employment opportunities. This questioning helped determine whether the respondents believed post-employment restrictions affected their post-service employment opportunities. Further, responses gathered were used to test the hypothesis: that post-employment restrictions adversely affect the post-service opportunities of Air Force officers (See page 3).

The fourth section measured the respondents' attitude about the fairness of post-employment restrictions. Specifically, respondents' were asked:

- 1) if they felt restrictions were fair or unfair to Air Force officers;

2) if they felt the restrictions were unfair, respondents' were asked to indicate why they felt this way;

3) if they felt post-employment restrictions should apply to the legislative and judicial branches of the federal government; and,

4) if they opposed post-employment restrictions.

By measuring the respondents' reaction to the fairness of post-employment restrictions, it was anticipated that we could gather insight into what aspects of the current restrictions respondents found most objectionable. Subsequently, the information gathered in this section was used to make recommended improvements in post-employment restrictions.

The fifth section of the survey tested the respondents' knowledge of the restrictions. An objective test, the last five questions of the questionnaire highlighted very basic and general restrictions placed on the post-service employment activities of retirees. This section had two purposes: 1) to determine how much respondents actually know about the restrictions affecting them; and, 2) to serve as a basis of comparison between what the respondents felt about the restrictions and their level of knowledge of those restrictions.

Finally, questions, intermixed throughout the questionnaire, collected data that would be compared to the results of a similar questionnaire prepared by the General Accounting Office (GAO). To maintain the integrity of the comparison, questions used either the exact language of the

GAO questionnaire or were modified slightly to reflect the differences in the target populations. Data collected from these questions was compared with the results of the GAO survey to determine if the attitudes of former DOD employees and the attitudes of pre-retirees differed.

Data Collection Plan. The questionnaire went through a three-phase development process before being mailed to the sample group. First, the survey was reviewed for content validity by Dr. Wehrle-Einhorn. Dr. Wehrle-Einhorn is an attorney and professor at the Air Force Institute of Technology (AFIT). Once his review was completed, the survey was reviewed by the AFIT survey review monitor, Capt Jennings. Capt Jennings checked the questionnaire for compliance with Air Force survey standards. Concurrent with Capt Jennings review, additional advice was sought from Dr. Shane (AFIT/LS). Dr. Shane is an operational research professor at AFIT. His contributions aided the author in further refining the reliability of the questionnaire. Mr. Charles H. Hamilton completed the final review. Mr. Hamilton is the chief of the Personnel Survey Branch, HQAFMPC/DPMYOS, Randolph AFB, Texas. It is his branch's responsibility to review survey material for compliance with Air Force survey standards. Once his recommendations were incorporated into the questionnaire, copies of the questionnaire, a pre-addressed return envelope, and computer answer sheet were sent to the respondents.

Statistical Analysis. The data collected was analyzed in the following order:

1. Categorization of the data.
2. Preparation of frequency distribution tables.
3. Cross-tabulation of selected questions.
4. Conduct a hypothesis test of selected portions of the questionnaire.
5. Cross-compare the information collected in the thesis questionnaire and the GAO questionnaire.
6. Summarize the data results.
7. Analyze the results.

To facilitate the analysis of the data, survey results were loaded on the VAX system (CSC) in Building 141, Twining Hall, Wright-Patterson AFB, Ohio. Relying on the SAS statistical program loaded on CSC, specific analytical procedures were run to measure the frequency of individual responses (SAS, 1985:45). Further, SAS was used to sort data and perform cross-tabulations (SAS 1985:47). The results of this analysis can be found in Chapter IV of this thesis.

IV. Results and Findings

Findings

The following is a summary of the findings:

a) No data was available which measures both the frequency and nature of post-employment conflict of interest violations as they pertain to members of the Department of Defense.

b) The respondent's median score on the basic knowledge test was 60. The mean was 65.2 percent.

c) Based on the opinions of those surveyed:

(1) Forty (40) percent agreed that the Air Force was doing a good job keeping members informed about changes in post-employment conflict of interest law;

(2) Ten (10) percent agreed that Retiree Affairs had done a good job briefing them on post-employment restrictions;

(3) Seventy-eight (78) percent reported that they would like to receive an annual briefing on post-employment restrictions;

(4) Seventy-one (71) percent of those who do not plan to seek employment with a defense contractor reported that the restrictions seriously hurt their chances of finding employment with a defense contractor;

(5) Ninety-two (92) percent of those who reported that restrictions affected their decision to seek employment with a defense contractor, further reported that post-employment restrictions seriously hurt their chances to find employment after retiring from the military;

(6) Fifty-eight (58) percent of those who reported that they do not plan to seek employment with a defense contractor reported that their decision was affected by post-employment restrictions;

(7) Seventy-eight (78) percent of those surveyed reported that in their opinion the post-employment restrictions were unfair to retired Air Force officers;

(8) Seventy (70) percent reported that they opposed restrictions on the post-service employment of Air Force officers;

(9) Seventy-nine (79) percent agreed that post-employment restrictions should apply to the legislative and judicial branches of the federal government;

(10) Eighty-five (85) felt that the movement of employees between the Department of Defense (DOD) and the defense industry was advantageous to DOD;

(11) Ninety (90) percent felt that the movement of employees between the Department of Defense (DOD) was advantageous to the defense contractor.

d) On those questions where comparison was possible, there was no significant difference between the thesis survey and the findings of the General Accounting Office (GAO).

Incidents of Conflict of Interest Involving Ex-DOD Employees

Based on contact with the Department of Defense's Office of the Inspector General, it was concluded that no data was available which measured both the frequency and nature of post-employment conflict of interest violations. Further, no data was available which would measure the extent to which former members of DOD were employed by the defense industry.

Following the research plan outlined in Chapter III, the first attempt to secure the necessary data was made on 9 December 1987. On that date, a call was made to the Defense Department's Office of Inspector General, Criminal Investigations Service (Dayton, Ohio). It was reported that no such database was maintained in the regional offices (Trost, 1987). The Dayton office stated investigation

records were forwarded quarterly to the headquarters office in Arlington, Virginia. Those records were combined with other regional offices and a consolidated report was sent to Congress on the 1st of January.

After the first of January, 1988, Headquarters, Office of the Inspector General (DOD) was contacted. At that time, it was discovered records on investigations are not categorized by statute violated. A request to review the investigations database was denied for security reasons. Consequently, it would be impossible to determine which reported violations of conflict of interest law applied to post-employment situations. This discovery was reinforced in a report by the General Accounting Office (GAO) to Congress. According the GAO, the Defense Department does not breakdown its investigation records by specific violations (GAO, 1988:7). As a result , specific data could not be gathered on the trend in post-employment conflict of interest violations.

Further attempts to gather specific data on the frequency of post-employment violations have failed. Further, specific information on the number of former DOD employees working in the defense industry is not available. Reporting requirements found in 10 U.S.C. 2397 (1982) were not being actively followed (GAO, 1986(a):1) According to a GAO study conducted in 1986, less than 30 percent of those required to report under 10 U.S.C. 2397 (1982) reported their

employment with defense contractors. The 1987 amendments to Section 2397 are expected to improve reporting figures.

Lacking the necessary data, no statistical test could be performed which would either prove or disprove the hypothesis posed in Chapter I:

There is a positive correlation between increased restriction on the employment of retired Air Force officers and investigations/prosecutions of these officers for conflict of interest. (See Page 3)

Consequently, there was no way to measure the relative impact of post-employment conflict of interest law on curbing post-employment violations.

A Detailed Review of the Thesis Survey

Of the 250 questionnaires sent:

- 175 were returned (70%);
- 11 were returned (Addressee unknown);
- 3 were returned incomplete;
- 161 were used to compile statistics for this research (67%).

The 161 completed questionnaires returned were analyzed. The results of this sample were can be applied to the survey population (1,044) with a confidence level of 95% \pm 2%.

Limitations of the Survey. The following limitations on the data must be recognized:

a) The data on impact on the post-employment career searches of former Air Force engineering (project) managers and contracting officers are the respondents' own, unverifiable, self-reported perceptions. An independent, objective observer might describe the relationship between post-employment restrictions and second-career searches differently. Reporting of the actual impact could only be measured if retirees were surveyed.

b) Percentages reported, counts, and the overall confidence level were based on the completed surveys returned. No projections are made for the 33 percent of the sample who did not respond. Further, no projections were made for those who did not respond to specific questions. Consequently, the projection for each question are made against slightly different totals. These differences are minor and did not affect the overall confidence level of the projections.

Section 1: Survey Demographic Breakdown. The demographic distributions of the officers surveyed are reported in Tables 4, 5, and 6 below:

Table 4. Breakdown of Respondents by Pay Grade:

Grade	Number	Percent
0-4	35	22
0-5	76	47
0-6	50	31

Table 5. Breakdown of Respondents by Air Force Specialty Code (AFSC):

AFSC	Number	Percent
65xx	43	27
27xx	55	34
28xx	58	36
Other	5	3

Table 6. Distribution Based on Influence Over Acquisitions:

Level of Influence	Number (Percent)
Level 1 (High)	116 (72%)
Level 2 (Average)	18 (11%)
Level 3 (Low)	27 (17%)

Note: A full description of the statistics used to develop these ratings can be found in Appendix H.

Analysis of Demographics. It was anticipated there would be variance between the numbers who reported eligibility for retirement and those names provided by the Military Personnel Center (MPC). The request to MPC was for selected officers with over 19 and half years of active duty service. Since the list was prepared in April of 1988, it would follow that some of the respondents would not be eligible for retirement until some time after the date they were surveyed. Further, of those with at least 20 years of service, some may not be eligible for retirement because of service commitments incurred as the result of assignment changes, promotions, or training. Consequently, 81 percent of those surveyed reported they were eligible for retirement. Where this variance was thought to have an impact on the results, separate cross-tabulations were run. Those, and other, cross-tabulations are included in the reported findings of each section.

Section 2: Respondents Reactions to Quality of Information They Received. In questions 12 through 15, respondents were asked to state the degree to which they agreed or disagreed with certain statements made concerning the quality of the information they had received on post-employment conflict of interest (See Appendix G for full text of the survey questions). A five increment scale of responses was used: 1) Strongly Disagree (SDA); 2) Disagree (DA); 3) Neither Agree nor Disagree (N A/DA); 4) Agree (A); and, 5) Strongly Agree (SA). Table 7 reports the overall results of this questioning:

Table 7. Distribution of Responses To Questions 12 Through 16: (Percent of Total Sample)

Question	Disagree	Neither Agree Nor Disagree	Agree
AF Has Done Good Job (12)	43.5	19.9	36.6
Articles Explained (13)	54.0	16.8	29.2
JAG Has Done Good Job (14)	56.5	19.9	23.6
Retiree Affairs Has Done Good Job (15)	41.0	49.1	9.9

Cross-tabulations were performed to identify the reactions of selected groups to these questions. First, Table 8 reflects the opinions and reactions of those

eligible for retirement. Table 9 reflects the opinions and reactions of those who plan to retire in the next 6 months.

Table 8. Reactions of Those Eligible for Retirement To Questions 12 through 15 (Percent):

Question	Disagree	Neither Agree Nor Disagree	Agree
AF Has Done Good Job (12)	43.2	17.7	39.3
Articles Explained (13)	50.0	16.9	33.1
JAG Has Done Good Job (14)	53.1	20.0	26.9
Retiree Affairs Has Done Good Job (15)	41.4	47.7	10.9

Table 9. Reactions of the Those Who Plan To Retire Within the Next Six Months to Questions 12 Through 15 (Percent):

Question	Disagree	Neither Agree Nor Disagree	Agree
AF Has Done Good Job (12)	44.5	18.3	39.9
Articles Explained (13)	48.5	18.2	33.3
JAG Has Done Good Job (14)	51.5	18.2	30.3
Retiree Affairs Has Done Good Job (15)	45.5	36.4	18.2

Finally, a majority of both those eligible to retire and those who planned to retire within the next 6 months agreed that that service members should receive an annual briefing on post employment restrictions (68% and 73% respectively).

Analysis of Section 2. In all strata of respondents (general population, eligible to retire, plan to retire, etc.), there was a tendency for respondents to neither agree nor disagree with the statements made. Those who neither agreed nor disagreed averaged 20 percent of the sample population, with 49 percent of the respondents not having an opinion about the job being done by Retiree Affairs.

There may be several reasons why respondents neither agreed nor disagreed. First, the questions asked respondents to evaluate organizations or information which they may not have been exposed to. Second, the survey may have asked respondents to evaluate information they had been exposed to, but which respondents had no standard to evaluate against. Third, there may have been something in the question itself that caused the respondent confusion; and therefore, the respondent did not feel able to respond. Finally, it is possible that the respondents had no strong feelings about the information they had received on post-employment restrictions.

Further analysis of the survey results supports the first possibility: respondents did not have an opinion about the quality of the information they received because they had

either not been exposed to organizations which provide information; or, they had not received any information about post-employment restrictions. Question 16 asked respondents if they felt members should receive an annual briefing on the changes in post-employment conflict of interest law. Sixty (60) percent of the general sample population, 68 percent of those eligible to retire, and 73 percent of those who plan to retire, agreed that members should receive annual briefings on post-employment restrictions. It seems unlikely that someone would feel strongly that further information is needed if existing information is adequate. Consequently, it appears that the tendency for respondents to not agree or disagree with the statements was a result of their lack of information on the subject.

This lack of information appears to be the result of either: 1) no information being provided by the organization; 2) poor quality information being provided by organization; or, 3) the fact that respondents were not aware that the organization provided information on post-employment conflict of interest. In any event, the survey indicates that those members most likely to need information on post-employment conflict of interest do not agree that Air Force organizations have done a good job providing them information on post-employment restrictions.

Section 3: Impact of Post-Employment Restrictions on
Second Career Search. The officers surveyed were asked to give their opinions on the impact of post-employment

restrictions on their post-service employment opportunities. Specifically, the respondents were asked five questions which would reflect their opinions on the impact of post-employment restrictions. Respondents were asked:

a) if they planned to seek employment with a defense contractor when they retire (Question 17);

b) if they felt it would be easy or difficult for them to find a job similar to their current job (Question 18);

c) if they felt that post-employment restrictions seriously hurt their chances for finding a job when they retired (Question 19);

d) to indicate to what degree post-employment restrictions affected their decision to seek a job with a defense contractor (Question 20); and,

e) to indicate whether or not they intended to seek the counsel of an attorney before taking a job with a defense contractor (Question 21).

Their responses to the those questions are reflected in Tables 10, 11, 12, 13, and 14 below:

Table 10. Responses to Question 17 - Plan to Seek Employment With a Defense Contractor:
(Percent of Total Sample)

=====		
Yes	No	Undecided

47.2	14.9	37.9
=====		

Table 11. Responses to Question 18 - Easy or Difficult to Find Similar Work
(Percent of Total Sample):

=====				
Very Easy	Easy	Neither Easy Nor Difficult	Difficult	Very Difficult

28.6	29.8	18.0	18.6	5.0
=====				

Table 12. Responses to Question 19 - Restrictions Seriously Hurt Post-Employment Opportunities
(Percent of Total Sample):

SA	A	N A/DA	DA	SDA
29.8	44.1	9.9	12.4	3.7

Table 13. Responses to Question 20 - Decision to Seek
(Percent of Total Sample):

Strongly Affected	Moderately Affected	No Affect
11.8	44.7	43.5

Table 14. Response To Question 21 - Seek Counsel
(Percent of Total Sample)

Yes	No
64	36

Cross-tabulations were run to determine if specific strata within the population reacted differently to the questions asked. The results of those cross-tabulations are summarized below:

a) Of those who plan to seek employment with a defense contractor, 79 percent felt that post-employment restrictions seriously hurt their chances to find employment;

b) Of those who do not plan to seek employment with a defense contractor, 71 percent reported that

post-employment restrictions hurt their chances to find employment;

c) Of those who reported that finding a job similar to their current job would be difficult, 78 percent also felt that post-employment restrictions seriously hurt their chances to find a job once they retired;

d) Of those who do not plan to seek a job with a defense contractor, 58 percent reported that post-employment restrictions affected their decision to seek employment with a defense contractor;

e) Of those who felt it was difficult to find a job similar to their current job, 63 percent also reported that post-employment restrictions affected their decision to seek employment with a defense contractor;

f) Of those who reported that post-employment restrictions affected their decision to seek employment with a defense contractor, 92 percent reported that post-employment restrictions seriously hurt their chances of finding employment after retiring; and,

g) Of those who reported they do not plan to retire in the next 6 months, 65 percent also reported that post-employment restrictions affected their decision to seek employment with a defense contractor.

Finally, a hypothesis test was done to test the hypothesis:

In the opinion of Air Force officers, increased restrictions have adversely affected their post-service employment opportunities [See Page 3].

The hypothesis test supported the conclusion that a majority of the Air Force officers surveyed felt post-employment restrictions adversely affected their post-service employment opportunities. (See Appendix J for calculations).

Analysis of Section 3. Overall, statistics in section 3 support the hypothesis that post-employment restrictions are affecting the post-service employment

searches of Air Force officers. Of those who reported that they do not plan to seek employment with a defense contractor, 71 percent also reporting that post-employment restrictions seriously hurt their chances to find a job after retiring. Further, of those who do not plan on seeking employment with a defense contractor, 58 percent also reported that post-employment restrictions strongly affected their decision. Finally, of those who do not plan to retire in the next 6 months, 65 percent also reported that post-employment restrictions affected their decision not to seek employment with a defense contractor.

It is reasonable to conclude that a major employment alternative for those retiring from military service is working for a defense contractor. If officers, because of post-employment restrictions, believed finding a similar job in the private sector was no longer possible; then, it would also be reasonable to conclude that post-employment restrictions are encouraging officers who wish to continue working in their speciality to remain on active-duty. This may, or may not, be a desired consequence of post-employment restrictions. In any case, it is a real possibility that post-employment restrictions are impacting officer attrition rates.

Section 4: Perceived Fairness of Post-Employment

Restrictions. In the fourth segment of the survey, respondents were asked if they felt post-employment restrictions were fair (Question 22). Further, if they felt

the restrictions were unfair, respondents were asked to indicate or include reasons why they felt they were unfair (Question 23). Tables 15, 16 and 17 reflect the respondents' feelings on the fairness of post-employment restrictions. Table 17 includes the specific comments offered by participants. Any references which would associate any respondent with a comment have been deleted.

Table 15. Those Who Felt Restrictions Were Fair/Unfair:

=====		
Fair	Unfair	Cannot Judge

8.1%	77.6%	14.3%
=====		

Table 16. Reasons Given By Respondents Who Felt the Restrictions Were Unfair:

=====	
Reduced Employment Opportunities:	77%
Violated Rights:	36%
Infringed on personnel freedom:	61%
Prevented people from using valuable skills:	84%.
=====	

Note: Percentages are based on those respondents who marked unfair to question 22.

Table 17. Written Comments:
(Thirty-six (36) Respondents Included Written Comments.)

=====

- "[The restrictions] have intimidated contractors and further reduced even legal opportunities."
- "[The restrictions deny [me the] right to engage in what I am best trained and experienced in."
- "[The restrictions] prevent the nation from receiving [the] full benefit of [a] scarce talent and resource."
- "They prevent the government from realizing a return on an investment, in that skills developed within the government may not be available to the government through a contractor."
- "Restrictions pre-judge officers [as] 'guilty'. Therefore, prohibit the opportunity for employment. Unfortunately, some of our most qualified [people] are purged from the system that is continually in need of knowledgeable employees."
- "We do need an integrity check - so lets punish the guilty, no restrict the opportunity."
- "Not [unfair] to the officer, but a great unfairness and deprivation to the people of the country! They cannot continue to get a full return on their investment."
- "All military members are being penalized for the transgressions of a relatively few, high-ranking individuals."
- "They [restrictions] are [a] spiteful, Congressional reactions to publicized abuses."
- "The perceived influence of former employees is a figment [sic] of someone's imagination."
- "Regular officers must also forfeit a portion of their compensation [retirement pay] if they work for the government."

=====

Note. Of the 32 respondents supplying additional written comments, 90 percent felt current restrictions injured the government because the government lost the benefit of having skilled employees working in the defense industry.

The last question which specifically related to the fairness of the restrictions, asked the respondents whether they felt post-employment restrictions should apply to the legislative and judicial branches of government. The feelings of the respondents are reflected in Table 18.

Table 18. Responses to Question 27 - Applicability of Post-Employment Restrictions to Other Branches of Federal Government:

=====

Question 27: "Restrictions on post-service employment of federal employees should apply to the legislative and judicial branches of the federal government."

=====

SA	MA	N A/DA	MDA	SDA
59.6	19.3	11.2	3.7	6.2

=====

=====

Note. Seventy-eight (78) percent agreed that post-employment restrictions should apply to Congress and the judiciary. It is interesting that the same percentage felt the restrictions were unfair (See Table 15).

=====

Cross-tabulations on the issue of fairness revealed some interesting results. Those results are summarized below:

- a) Of those who perceive they have little influence on the acquisition process, 88 percent also feel the restrictions are unfair. In contrast, only 75 percent of those who feel they have a high amount of influence on the process, feel the restrictions are unfair.

b) Of those who said post-employment restrictions had no affect on their to seek employment with a defense contractor, 60 percent also reported that the restrictions were unfair.

c) Of those who neither agreed nor disagreed that restrictions seriously hurt their chances to find a job when they retired, 64 percent also felt the restrictions were unfair.

d) Of those not planning to retire within the next 6 months, 67 percent believed that the restrictions should apply to the legislative and judicial branches of the federal government.

Analysis of Section 4. There are three aspects of of the statistics on the fairness of post-employment restrictions that need further discussion. First, the perception that post-employment restrictions are unfair does not seem to be influenced by future employment plans. Of those who reported that post-employment restrictions did not affect their post-service employment decisions, 60 percent believed the restrictions were unfair. Further, of those who neither agreed nor disagreed that post-employment restrictions seriously hurt their ability to find a job when they retired, 63 percent felt that the restrictions were unfair. Consequently, it is reasonable to conclude that the perception that post-employment restrictions are unfair is based on something other than the future employment concerns of the respondents.

Second, those who felt they had less overall influence on the acquisition process, also had a greater feeling that the restrictions were unfair. Eighty-eight (88) percent of those who felt they had low overall influence on the

acquisition process, felt the restrictions were unfair. In contrast, only 75 percent of those who felt they had high overall influence on the acquisition process, also reported that the restrictions were unfair. Further, of the majors (O-4) that responded to the survey, 81 percent felt the restrictions were unfair; 72 percent of the colonels (O-6) surveyed believed that the restrictions were unfair.

It appears that the amount of influence one perceives they have over the acquisition process bears some relation to their perception of unfairness. If that is true, then the less influence one perceives he/she has over the acquisition process, the more likely he/she will feel victimized by post-employment restrictions.

Finally, the statistics on the perceived fairness of post-employment restrictions tend to confirm the written comments with respect to the Department of Defense (DOD) losing the benefit of competent employees in the defense plants. Both reflect the concern of the active duty officer over the benefits of the "revolving door" being overlooked when legislation is passed.

Tables 19 and 20 reflect the respondents' views as to whether the movement of workers was beneficial to either the Department of Defense or the defense contractor.

Table 19. Is Movement Advantageous/Disadvantageous to DOD:

Advantageous	Neither Advantageous Nor Disadvantageous	Disadvantageous
85.2%	9.9%	4.9%

Table 20. Is Movement Advantageous/Disadvantageous to the Contractor:

Advantageous	Neither Advantageous Nor Disadvantageous	Disadvantageous
91.3%	7.5%	1.2%

Section 5: Basic Knowledge Test. The last five questions of the survey made up a basic knowledge test. Before evaluating the results of the survey, the test questions were reviewed for their ability to measure the knowledge level of the respondents. Two related evaluations were done: 1) measurement of miss rates; and, 2) determination of the differentiation index (DI). The test questions were determined to fairly measure the knowledge level of the respondents. (For the full discussion of the test question evaluation see Appendix I.)

After completing the test evaluation, the scoring distribution was determined. The scoring distribution was used to make determinations on the overall knowledge level

of the respondents on the issue of post-employment conflict of interest. Table 21 reflects the distribution of scores.

Table 21. Distribution of Scores:

Score :	0	20	40	60	80	100
Count :	3	3	36	45	57	17

A cross-tabulation was done to evaluate the relationship between the mean scores and the perception that the restrictions were unfair. Table 22 reports the results of that cross-tabulation.

Table 22. Mean Scores on the the Knowledge Test:

Group	Mean Score
Total Sample	65.2
Those Who Felt Restrictions Unfair	66.9
Those Who Felt Either the Restrictions Were Fair or Could Not Judge	61.2

Analysis of Section 5. Although it is possible that five questions were not enough to get a representative distribution, the test results do suggest that the overall knowledge of the respondents was poor. Together with the

results of Section 2, where it was concluded that most participants felt they lacked knowledge in the area of post-employment restrictions, the test results support the conclusion that the average officer has a poor understanding of post-employment restrictions.

Finally, the mean scores of those who felt the restrictions were unfair were not significantly higher than the mean scores of those who either felt the restrictions were fair or could not judge from the information available (67 and 61.2 respectively). This tends to support the conclusion that knowledge of the restrictions is unrelated to perceived unfairness.

Comparison of the Thesis Survey and GAO Survey

In 1987, the General Accounting Office (GAO) responded to a Congressional request to determine how often former Department of Defense (DOD) personnel work for defense contractors (GAO, 1987:1). GAO reported several statistics which could be compared to the results of the thesis survey. In particular, four questions were asked of the GAO sample group which were also asked of the thesis sample group. The responses to these questions are compared below. The goal of the comparison was to determine whether there were any significant differences between the findings of GAO and findings of the thesis survey. Tables 23, 24, 25, and 26 reflects those comparisons.

Table 23. Comparison of Thesis Survey and GAO Survey -
Question 25:

=====
Question: In your opinion, how advantageous or
disadvantageous for DOD is the movement of former DOD
employees into the defense industry?

	ADVAN	DISADV	NEITHER
Thesis Survey	85%	5.0%	10.0%
GAO 1987 Study	90%	3.0%	7.0%

Table 24. Comparison of Thesis Survey and GAO Survey -
Question 26:

=====
Question: "In your opinion, how advantageous or
disadvantageous for defense contractors is the movement of
former DOD employees into the defense industry?"

	ADVAN	DISADV	NEITHER
Thesis Survey	91%	1%	8%
GAO 1987 Study	96%	>1%	4%

Table 25. Comparison of Thesis Survey and GAO Survey -
Question 24:

=====

Question: 'Taking everything into account do you
favor or oppose restrictions on the post-service employment
of Air Force Officers?' (Thesis Survey Version)

	Oppose	Favor	Neither
=====			
Thesis Survey	60%	34%	6%
GAO 1987 Study	65%	None Reported	
=====			

Table 26. Comparison of Thesis Survey and GAO Survey -
Question 22:

=====

Question: In your opinion are the present
restrictions on post-service employment fair or unfair to
retired Air Force Officers?' (Thesis Survey Version)

	Fair	Unfair	Can't Judge
=====			
Thesis Survey	8%	78%	14%
GAO 1987 Study	N/R	66%	N/R
=====			

Note. N/R = Not Reported

Analysis of the Comparison. The comparison between the
thesis survey and the 1987 GAO survey disclosed no
significant differences. In most cases, there was less than
a 5 percent variance between the two surveys. The

similarity in the results suggests opinions are not affected by the retirement or separation of the federal employee.

Implications of the Findings

Observations. The majority of those surveyed:

- a) Do not agree that the Air Force or its support organizations are doing a good job keeping them informed on the changes in post-employment restrictions;
- b) Feel they lack information on post-employment restrictions;
- c) Feel that post-employment restrictions have seriously hurt their chances to find employment when they retire;
- d) Feel that post-employment restrictions have affected their decision to seek employment with a defense contractor;
- e) Feel that the movement of employees between the Department of Defense and the defense industry is beneficial to both DOD and the defense industry;
- f) Oppose post-employment restrictions;
- g) Feel that post-employment restrictions should apply to legislative and judicial branches of the federal government;
- h) Scored poorly on a basic knowledge test of post-employment restrictions.

Analysis. The findings indicate confusion and a general lack of knowledge about how the post-employment restrictions affect retirees and pre-retirees. The mean test score of 65, is evidence that those affected by the restrictions do not understand them. An unintended consequence may be difficulty in proving the former member intended to violate the law. Absent criminal intent, it could be impossible to prosecute

anyone under a criminal statute covering post-employment activities.

The evidence also reflected the perception among respondents that the movement of workers between the Defense Department and the defense industry is beneficial to both parties. If restrictions continue to be established that would restrict this movement, then it would follow this perceived beneficial movement would be seriously hampered.

Several of the respondents who included written comments with their questionnaire responses indicated a trend among defense contractors. According to these respondents, defense contractors, fearful of the impact of post-employment restrictions, are not hiring retired military members. Respondents seemed to feel that confusion about the restrictions is causing defense contractors to adopt an avoidance policy where it comes to hiring former members of the military. In the respondents' opinion, this was the most direct effect of post-employment restrictions on post-employment opportunity.

Finally, the unavailability of useful information on the movement of former DOD personnel into the defense industry prevents those doing research in this area from establishing a 'firm' relations between the employment of former DOD employees and conflict of interest. A study done in 1984 criticized the federal government's information processing system (Colson, 1984:369). Accusing the government of having an 'information gap', critics claimed the quantity of

information available was seriously devalued by the quality of that information (Colson, 1984:370). We have been unable to secure useful data on post-employment trends, as has the General Accounting Office (GAO, 1988:7). One implication of this lack of useful information may be that Congress is effectively denied access to the data they need in order to enact post-employment restrictions which are both the most effective and least intrusive.

V. Conclusions and Recommendations

Law and ethics can never be wholly separated. Both derive from human needs and interests rather than from the accidents of sovereignty. (Wright, 1964:180)

1. This study's attempt to isolated the causal relation between post-employment restrictions and incidents of post-employment conflict of interest has been frustrated by the unavailability of useful information. There is a need to develop information on the relationship of post-employment conflict of interest to the post-service employment of separated federal workers. Without a quantifiable measurement of this relationship, it is impossible to judge whether post-employment restrictions are effective.

RECOMMEND: That the Department of Defense (DOD) take the lead in developing standardized information collection procedures for post-employment conflict of interest. Specifically, DOD should be implement procedures that will allow researchers to follow the trends in the employment of former federal workers by defense contractors. Further, it is recommended that DOD maintain detailed records of reported violations, investigations, and prosecutions under post-employment conflict of interest. Finally, those records should be cross-indexed by type of reported violation, statute allegedly violated, parties involved, and agency which investigated the allegation.

2. The results of our basic knowledge test on post-employment conflict of interest indicated that it would be appropriate for the Department of Defense to provide a comprehensive guide which explains post-employment restrictions. To be used by Retiree Affairs, this guide would provide the kind of guidance on post-employment restrictions which is currently lacking. In addition, it would be beneficial for the services to develop a set of follow-up procedures designed to maintain contact with retirees for up to 3 years after being placed on the list of retirees.

RECOMMEND: A standardized DOD pamphlet outlining post-employment restrictions be developed by the Department of Defense's General Counsel. This pamphlet would be distributed to all offices and personnel either offering legal advice or retirement counsel. Further, this pamphlet would be made available to all those separating or retiring employees covered by post-employment restrictions.

3. In addition to informing separating and retiring DOD employees on post-employment restrictions, it would be beneficial to the federal government to develop a civilian education program for distribution to the private sector. If, as the respondents indicated, the private sector is confused by the coverage of current post-employment conflict of interest law, then perhaps those responsible for

enforcing the restrictions would be in the best position to take the initiative in developing an education program. This revitalized education program could eliminate confusion and maintain an increasingly constructive relationship between the government and the defense industry.

RECOMMEND: The federal government, through the Justice Department, develop a guide for contractors which spells out current employment restrictions and describes the impact of those restrictions on private contractors. Further, that the federal government develop a briefing on post-employment conflict of interest which would be available for presentation to interested private sector groups.

4. Congress needs to be wary of developing further post-employment restrictions at this time. In the absence of more comprehensive information concerning both the effects of the 'revolving door' and the effects of the existing restrictions, further restriction could aggravate the situation Congress is seeking to correct. Further, in the absence of more education for those affected, additional restrictions are likely to be ineffectual.

In addition, today's quickly enacted legislation may have created a serious enforcement problem for the Justice Department. In order to successfully prosecute violations of post-employment restrictions under the criminal statutes, it is generally necessary to prove criminal intent. It could be

difficult to prove criminal intent where there is evidence that suggests those who are covered are unaware of the restrictions.

RECOMMEND: Congress suspend any further legislative activity on post-employment conflict of interest until reliable information is available on the relationship of post-employment activity and conflict of interest. In addition, it is recommended that Congress require all government agencies to maintain accurate records of alleged conflict of interest violations, to include: 1) the statute allegedly violated; 2) the service or agency of the alleged violator; 3) the company involved; and, 4) action taken by the service or agency.

Recommended Further Research

1. A follow-on study designed to maintain the database established by this study. In particular, a study which continues to monitor the reactions and opinions of Air Force contracting officers and engineering managers to post-employment restrictions.

2. A new research effort designed to more fully test the knowledge of those affected by post-employment restrictions. Specifically, a study designed to accurately measure the knowledge level of those who must comply with post-employment restrictions. This study would also develop an acceptable level of knowledge which could be used by educating agencies to draft education materials.

3. A historical study which would study the relationship between laws designated to set ethical standards and ethical behavior.

Closing Comments

The issue of post-employment conflict of interest has been around since the middle of the 19th century. In that 130 year period, post-employment conflict of interest laws have become increasingly restrictive. Until 1978, restrictions have for the most part been reactions to documented cases of abuse. However, in the last 10 years the policy of restricting post-employment activities has changed in both substance and tone.

Since the introduction of the Ethics in Government Act of 1978, the scope of the statutes has seemed to reflect an assumption of guilt rather than innocence. This assumption of guilt may explain why such a large number of retirees and pre-retirees perceive the restrictions as unfair. In light of the lack of evidence on incidents of actual post-employment conflict of interest, it would appear the assumption of widespread conflict of interest is premature. Establishing a rational relationship between a law and the public interest is a basic tenet of the legislative process. If laws are passed which affect the employment options of a selected segment of the population, it would only seem appropriate to have information which supports the restriction. In the case of post-employment restrictions,

there is no demonstrable relationship between the statutory restrictions and the problem of post-employment abuses.

For the federal workers affected by these restrictions, it would seem to be in their best interest to be more active in their pursuit of restrictions which fairly govern their post-employment activities. Of those responding to the thesis survey, several included comments which supported some restrictions on post-employment activities. However, most modified their comments by saying current restrictions were unfair. In the legislative history of the statutes, the voice of the affected worker was relatively quiet. Of those who voiced an opposing opinion, few offered a constructive alternative. Without the informed opinion of those closest to the arena of government business, it is reasonable to expect awkward legislation.

This research has proved valuable if for no other reason than to expose the fog that surrounds post-employment conflict of interest. Neither proponents nor opponents to post-employment restrictions know what effect the laws are having. Further, neither group knows to what extent the post-service employment of federal workers by the defense industry hurts the acquisition process. Only through protracted, scientific research can we hope to lift the fog that surrounds this issue.

Appendix A: 10 U.S.C. Sec 2397a (1987)

Requirements Relating to Private Employment Contacts
Between Certain Department of Defense Procurement
Officials and Defense Contractors

(a) In this section:

(1) "Contract" has the same meaning as provide in section 2397(a)(1) of this title.

(2) "Covered defense official" means any individual who is serving -

(A) as a civilian officer or employee of the Department of Defense in a position for which the rate of pay is equal to or greater than the minimum rate of pay payable for grade GS-11 under the General Schedule; or

(B) on active duty in the armed forces in a pay grade of O-4 or higher.

(3) "Defense contractor" has the same meaning as provided in section 2397(a)(2) of this title.

(4) "Designated agency ethics official" has the same meaning as the term "designated defense official" in section 209(10) of the Ethics in Government Act of 1978 (92 Stat. 1850; 5 U.S.C. App.).

(5) "Employment" means a relationship under which an individual furnishes services in return for any payment or other compensation paid directly or indirectly to the individual for services.

(6) "Procurement function" includes with respect to a contract, any function relating to -

(A) the negotiation, award, administration, or approval of the contract;

(B) the selection of a contractor;

(C) the approval of changes in the contract;

(D) quality assurance, operation and developmental testing, the approval of payment, or auditing under the contract; or

(E) the management of the procurement program.

(b)(1) If a covered defense official who has participated in the performance of a procurement function in connection with a contract awarded by the Department of Defense contracts, or is contacted by, the defense contractor to whom the contract was awarded (or an agent of such contractor) regarding future employment opportunities for the official with the defense contractor, the official (except as provided in paragraph (2)) shall -

(A) promptly report the contact to the official's supervisor and the designated agency ethics official (or his designee) of the agency in which the covered defense officials is employed; and

(B) for any period for which future employment opportunities for the covered defense official have not been rejected by either the covered defense official or the defense contractor, disqualify himself from all participation in the performance of procurement function relating to contracts of the defense contractor.

(2) A covered defense official is not required to report the first contact with a defense contractor under paragraphs (1)(A) or to disqualify himself under paragraph (1)(B) if the defense official terminates the contact immediately. However, if an additional contact of the same or similar nature is made by or with the defense contractor, the covered defense official shall report (as provided in paragraph (1)) the contact and all contacts of the same or a similar nature made by or with the defense contractor during the 90-day period ending on the date the additional contract is made.

(c) A report required by subsection (b)(1) shall include -

(1) the date of each contact covered by the report; and

(2) a brief description of the substance of the contract.

(d)(1)(A) If the Secretary of Defense determines under paragraph (2) that a person has failed promptly to make a report required by subsection (b)(1)(A) or (b)(2) or has failed to disqualify himself in any case in which he is required to do so under subsection (b)(1)(B) -

(i) the person may not accept or continue employment with defense contractor during the 10-year period beginning with the date of separation from Government service; and

(ii) the Secretary may impose on the person an administrative penalty in the amount of \$10,000 or in such lesser amount as may be prescribed by the Secretary, taking into consideration all the circumstances.

(B) An individual who accepts or continues employment prohibited by subparagraph (A)(i) shall be liable to the United States for an administrative penalty as provided in subparagraph (A)(ii). Such penalty may be in addition to any penalty previously imposed on the individual under subparagraph (A)(iii) for failure promptly to make a report relating to the defense contractor by whom the individual is employed as required by subsection (b)(1)(A) or (b)(2).

(C) The Secretary of Defense may take action against an individual under this paragraph before, on, or after the date on which the individual's employment with the Government is terminated.

(2)(A) The Secretary of Defense shall determine --

(i) whether an individual has failed promptly to make a report required by subsection (b)(1)(A) or (b)(2) or has failed to disqualify himself in any case in which he is required to do so under subsection (b)(1)(B) and whether to impose a penalty under paragraph (1)(A)(iii) and the amount of such penalty; and,

(ii) whether an individual is liable to the the United States for an administrative penalty under paragraph (1)(B) and the amount of such penalty.

There shall be a rebuttable presumption in favor of a covered defense official that failure to report a contract with a defense contractor or failure to disqualify himself from participation in the performance of certain procurement functions is not a violation of subsection (b)(1)(A) or (b)(2) or subsection (b)(1)(B), as the case may be, if the defense official has received an opinion in writing from the designated agency ethics official under subsection (e) stating that a report or disqualification by the official was not necessary.

(B) Determinations of the Secretary under subparagraph (A) shall be made on the record after opportunity for an agency hearing as provided in subchapter II of chapter 5 of title 5. The determination of the Secretary shall be subject to judicial review under chapter 7 of such title.

(e) If a designated agency ethics official or his designee receives a report required by subsection (b) or a request for advice from a covered defense official relating to a contract described in such subsection, the designated agency ethics official or his designee may issue a written opinion regarding the necessity of a covered defense official to file a report or disqualify himself from participation in certain procurement functions, as the case may be.

(f) A covered defense official should request the advise of his supervisor and the appropriate designated agency ethics official (or his designee) on matters to which this section applies.

Appendix B: 10 U.S.C. Sec 2397b (1987)

Certain Former Department of Defense
Procurement Officials : Limitations on Employment
by Contractors

(a)(1) Subject to subsections (c) and (d), a person who is a former officer or employee of the Department of defense or a former or retired member of the armed forces may not accept compensation from a contractor during the two-year period beginning on the date of such person's separation from service in the Department of Defense if -

(A) on a majority of the person's working days during the two-year period ending on the date of such person's separation from service in the Department of Defense, the person performed a procurement function (relating to a contract of the Department of Defense) at a site or plant that is owned or operated by the contractor and that was the principal location of such person's performance of the procurement function;

(B) the person performed, on a majority of the person's working days during such two-year period, procurement functions relating to a major defense system and, in the performance of such function, participated personally and substantially, and in a manner involving decision-making responsibilities with respect to a contract for that system through contact with the contractor; or

(C) during such two-year period the person acted as a primary representative of the United States -

(i) in the negotiation of a Department of Defense contract in an amount in excess of \$10,000,000 with the contractor; or

(ii) in the negotiation of a settlement of an unresolved claim of the contractor in an amount in excess of \$10,000,000 under a Department of Defense contract.

(2) In the application of paragraph (1) to a former officer or employee of the Department of Defense or a former or retired member of the armed forces, a person's status as a contractor shall be determined as of the date of the separation from service in the Department of Defense of the officer or employee or member or former member involved.

(b)(1) Any person who knowingly violates subsection (a)(1) shall be subject to a civil fine, in an amount not to exceed \$250,000, in a civil action brought by the United States in the appropriated district court of the United States.

(2) Any person who knowingly offers or provides any compensation to another person, and who knew or should have known that the acceptance of such compensation is or would be in a violation of subsection (a)(1), shall be subject to a civil fine, in an amount not to exceed \$500,000, in a civil action brought by the United States in the appropriate district court of the United States.

(c) This section does not apply to any person with respect to -

(1) duties described in clause (A) or (B) of subsection (a)(1) which were performed while such person was serving -

(A) in a civilian position for which the rate of pay is less than the minimum rate of pay payable for grade GS-13 of the General Schedule; or

(B) as a member of the armed forces in a pay grade below pay grade O-4; or

(2) duties described in clause (C) of subsection (a)(1) which were performed while such person was serving -

(A) in a civilian position for which the rate of pay is less than the minimum rate of pay payable for a Senior Executive Service position; or

(B) as a member of the armed forces in a pay grade below pay grade O-7.

(d) This section does not prohibit any person from accepting compensation from any contractor that, during the fiscal year preceding the fiscal year in which such compensation is accepted, was not a Department of Defense contractor or was a contractor under Department of Defense contracts in a total amount less than \$10,000,000.

(e)(1) Any person may, before accepting any compensation, request the appropriate designated agency ethics official to advise such person on the applicability of this section to the acceptance of such compensation. For purposes of the preceding sentence, the appropriate designated agency ethics official is the designated agency ethics official of the agency in which such person was serving at the time such person separated from service in the Department of Defense.

(2) A request for advice under paragraph (1) shall contain all information this relevant to a determination by the designated agency ethics official on such request.

(3) Not later than 30 days after the date on which a designated agency ethics official receives a request for advice under paragraph (1), such official shall issue a written opinion on the applicability of this section to the acceptance of compensation covered by the request.

(4) If a designated agency ethics official, on the basis of a complete disclosure as required by paragraph (2), states in a written opinion furnished to any person under this subsection that this section is inapplicable to the acceptance of compensation by such person from a contractor in a particular case, there shall be a conclusive presumption in favor of such person, for the purposes of this section that the person's acceptance of such compensation in such case is not a violation of subsection (a)(1).

(f) In this section -

(1) The term "compensation" includes any payment, gift, benefit, reward, favor, or gratuity --

(A) which is provided, directly or indirectly, for services rendered by the person accepting such payment, gift, benefit, reward, favor, or gratuity; and

(B) which is valued in excess of \$250 at the prevailing market price.

(2)(A) The term "contractor" means a person -

(i) that contracts to supply the Department of Defense with goods or services;

(ii) that controls or is controlled by a person described in clause (i); or

(iii) that is under common control with a person described in clause (i).

(B) Such term does not include -

(i) an affiliate or subsidiary of a person described in subparagraph (A) that is clearly not engaged in the performance of a Department of Defense contract; or

(ii) a State or local government.

(3) The term "procurement function" includes, with respect to a contract, any function relating to --

(A) the negotiation, award, administration, or approval of the contract;

(B) the selection of a contractor;

(C) the approval of changes in the contract;

(D) quality assurance, operational and developmental testing, the approval of payment, or auditing under the contract; or

(E) the management of the procurement program.

(4) The term 'armed forces' does not include the Coast Guard.

(5) the term 'major defense system' has the meaning given the term 'major system' in section 2303(5) of this title.

(g) For the purposes of this section, a person who is a retired member or a former member of the armed forces shall be considered to have been separated from service in the Department of Defense upon the date of the person's discharge or release from active duty.

Appendix C: 10 U.S.C. 2397c (1987)

Defense Contractors: Requirements Concerning Former
Department of Defense Officials

(a)(1) Each contract for the procurement of goods or services in excess of \$100,000 entered into by the Department of Defense shall include a provision under which the contractor agrees not to provide compensation to a person if the acceptance of such compensation by such person would violate section 2397b(a)(1) of this title.

(2) Such a contract shall also provide that if the contractor knowingly violates a contract provision required by paragraph (1) the contractor shall pay to the United States, as liquidated damages under the contract, an amount equal to the greater of -

(A) \$100,000; or

(B) three times the amount of the compensation paid by the contractor to the person in violation of such contract provision.

(b)(1)(A) Any contractor that was awarded one or more contracts by the Department of Defense during the preceding fiscal year in an aggregate amount of at least \$10,000,000 that is subject during a calendar to a contract provision described in subsection (a) shall submit to the Secretary of Defense, not later than April 1 of the next year, a written report covering the preceding calendar year. Each such report shall list the name of each person (together with other information adequate for the Government to identify the person) who-

(i) is a former officer or employee of the Department of Defense or a former or retired member of the armed forces; and

(ii) during the preceding calendar year was provided compensation by that contractor, if such compensation was provided within two years after such officer, employee, or member left service in the Department of Defense.

(B) In the case of each person named in a report submitted under subparagraph (A), the report shall -

(i) identify the agency in which the person was employed or served on active duty during the last two years of the person's service with the Department of Defense;

(ii) state the person's job title and identify each major defense system, if any, on which the person performed any work with the Department of Defense during the last two years of the person's service with the Department;

(iii) contain a complete description any work that the person is performing on behalf of the contractor; and

(iv) identify each major defense system on which the person has performed any work on behalf of the contractor.

(2) A person who knowingly fails to file a report required by paragraph (1) shall be subject to an administrative penalty, not to exceed \$10,000 imposed by the Secretary of Defense after an opportunity for an agency hearing on the record pursuant to regulations prescribed by the Secretary of Defense. The determinations of the Secretary shall be included in such record. The determinations of the Secretary shall be subject to judicial review under chapter 7 of title 5.

(3) The Secretary of Defense shall review each report under paragraph (1) for the purposes of (A) assessing the accuracy and completeness of the report, and (B) indentifying possible violations of section 2397b(a)(1) of this title or of a contract provision required by subsection (a). The Secretary shall report any such possible violation to the Attorney General.

(4) The Secretary shall make reports submitted under this subsection available to any Member of Congress upon request.

(d)[c] Subsection (g) of section 2397b of this title, and definitions prescribed in subsection (f) of such section, apply to this section.

Appendix D: 18 U.S.C. 207 (1988)

Disqualification of Former Officers and Employees:
Disqualification of Partners of Current Officers
and Employees

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, included a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for , or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or with the intent to influence, makes any oral or written communications on behalf of any other person (except the United States) to -

(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise while so employed; or

(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or with the intent to influence, makes an oral or written communication on behalf of any other person (except the United States), to, or (i) having been so employed and as specified in subsection (d) of this section within two years after his employment has ceased, knowingly represents or aid, counsels, advises, consults, or assists in representing any other person (except the United States) by personal presence at any formal or informal appearance before -

(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) as to (i), which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or as to (ii), in which he participated personally and substantially as an officer or employee; or

(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to -

(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest -

shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

(d)(1) Subsection (c) of this section shall apply to a person employed -

(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

(B) on active duty as a commissioned officer of a uniformed service assigned to pay grade of O-9 or above as described in section 201 of title 37, United States Code, or

(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established with the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay O-7 or O-8, as described in section 201 of title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department of agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultations with the departments or agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representations by a former officer or employee, who is -

(A) an elected official of a State or local government, or

(B) who principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education as defined in section 120(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

(e) For the purposes of subsection (c) whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from remaining functions of the department or agency, the director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, for former officers and employees of the department or agency whose official responsibilities include supervision of said agency or bureau.

(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director for the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and the the national interest would be served by the participations o f former officer or employee.

(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts[^][?^ as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in a particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out the subsection.

Appendix E: 18 U.S.C. Sec 281 (1988)

Restrictions on Retired Military Officers Regarding
Certain Matters Affecting the Government

(a)(1) A retired officer of the Armed Forces who, while not on active duty and within two years after release from active duty, directly or indirectly receives (or agrees to receive) any compensation for representation of any person in the sale of anything to the United States through the military department in which the officer is retired (in the case of an officer of the Army, Navy, Air Force, or Marine Corps) or through the Department of Transportation (in the cases of an officer of the Coast Guard) shall be fined under this title or imprisoned not more than two years, or both.

(2) Any person convicted under paragraph (1) shall be incapable of holding any office of honor, trust, or profit under the United States.

(b) A retired officer of the Armed Forces who, while not on active duty and within two years after release from active duty, acts as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States -

(1) involving the military department in which the officer is retired (in the case of an officer of the Army, Navy, Air Force, or Marine Corps) or the Department of Transportation (in the case of an officer of the Coast Guard); or

(2) involving any subject matter with which the officer was directly connected while in an active-duty status;

shall be fined under this title or imprisoned not more than one year, or both.

(c) This section does not apply -

(1) to any person because of the person's membership in the National Guard of the district of Columbia; or

(2) to any person specifically exempted by law.

Appendix F: 37 U.S.C. Sec 801(c) (1965)

(Relevant Text)

(c) Payment may not be made from any appropriation, for a period of three years after his name is placed on that list, to an officer on a retired list of the Regular Army, Regular Navy, the Regular Air Force, the Regular Marine Corps, the Regular Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Services, who is engaged for himself or others in selling or contracting or negotiating to sell, supplies or war materials to an agency of the Department of Defense, the Coast Guard, the National Oceanic and Atmospheric Administrations, or the Public Health Service.

Appendix G: Survey Questions
(USAF SCN 88-51)

Introduction: This survey is designed to measure the influence of recent changes in post-service conflict of interest law on the retiring Air Force officer. As members identified with more than 19 years of service, your opinions have a significant effect on our research. We appreciate your cooperation in completing this survey.

RESPONSES TO THIS SURVEY WILL NOT BE ATTRIBUTABLE TO THE INDIVIDUAL RESPONDENTS. RESPONSES WILL BE COMBINED AND ANALYZED AS AN AGGREGATE STATISTIC.

In responding, please indicate your response by marking in the appropriate space on the attached answer sheet:

1. Are you eligible to retire within the next 6 months?
 - a. Yes
 - b. No

2. Are you thinking of retiring within the next 6 months?
 - a. Yes
 - b. No

3. What is your military pay grade?
 - a. O-4
 - b. O-5
 - c. O-6
 - d. Other

4. What is your Air Force Specialty code (AFSC)?
 - a. 65XX
 - b. 27XX
 - c. 28XX
 - d. Other

5. Your primary job responsibility during the past 5 years can best be categorized as:

- a. Systems engineer
- b. Project Manager
- c. Design (R&D) Engineer
- d. Contracting Officer
- e. Other

6. For the last five years, the average contract price of the programs you worked on was:

- a. less than \$100,000.
- b. Between \$100,000 and \$5 million.
- c. Over \$5 million but less than \$10 million.
- d. Between \$10 million and \$100 million.
- e. Over \$100 million.

7. For the last five years, the majority of your working time has been dedicated to acquisitions that were:

- a. Completed within a single year.
- b. Phased programs, covering more than a single year.
- c. Multi-year programs, but not phased programs.

8. For the last five years, the majority of your working time has been spent on:

- a. Single project programs.
- b. Multiple project programs.

9. Approximately how many employees (civilian and military combined) does your military organization employ?

- a. Less than 10 employees.
- b. 10 to 99 employees.
- c. 100 to 999 employees.
- d. 1000 to 9,999 employees.
- e. 10,000 or more employees.

10. During your career in acquisition, in which of the following areas have you had more than one year's experience? (circle as many as apply):

- a. Base Support Acquisition.
- b. Research and Development.
- c. Major Weapons System Acquisitions.
- d. Component Acquisition in Support of a Major Weapons System.
- e. Other.

11. In the last 2 years, how would you classify the influence you have had on the direction of the programs you were involved with?

- a. Extremely influential.
- b. Very influential.
- c. Influential.
- d. Somewhat influence.
- e. Not at all influential.

QUESTIONS 12 - 16

To indicate how much you agree or disagree with each statement circle:

- a. Strongly disagree.
- b. Disagree.
- c. Neither agree or disagree.
- d. Agree.
- e. Strongly Agree.

12. The Air Force has done a good job of keeping its members informed about changes in post-service conflict of interest laws.

- a. b. c. d. e.

13. The articles I have read on conflict of interest have clearly explained the restrictions on post-service employment.

- a. b. c. d. e.

14. The JAG office has done a good job of keep me informed on changes in conflict of interest law.

a. b. c. d. e.

15. Retired Affairs has done a good job of briefing me on post-service employment restrictions.

a. b. c. d. e.

16. I feel service members should receive an annual briefing on changes in post-service conflict of interest law.

a. b. c. d. e.

17. When you retire(d), do (did) you plan to seek employment in a defense related industry.

a. Yes.
b. No.
c. Undecided at this time.

18. How easy would it be for you to find a job similar to your current job?

a. Very easy.
b. Easy.
c. Neither easy nor difficult.
d. Difficult.
e. Very Difficult

19. In your opinion, the restrictions on post-service employment seriously hurt your chances of finding employment after retiring from the military.

a. Strongly agree.
b. Somewhat agree.
c. Neither agree nor disagree.
d. Somewhat disagree.
e. Strongly disagree.

20. To what degree have conflict of interest restrictions effected your decision to seek employment with a defense contractor?

- a. Strongly affected.
- b. Moderately affected.
- c. No affect.

21. Will you (or did you) seek the counsel of an attorney before accepting civilian employment with a defense contractor?

- a. Yes.
- b. No.

22. In your opinion are the present restrictions on post-service employment fair or unfair to retired Air Force officers?

- a. Fair
- b. Unfair
- c. Cannot judge from the information given here
(Go on to 24)

21. If you feel the restrictions are unfair, please indicate your reasons by circling the responses below:
(Circle ALL which apply)

- a. They reduce employment opportunities
- b. They are a violation of specific constitutional or legal rights
- c. They infringe on individual freedom even if they do not violate specific legal rights
- d. They prevent people from using valuable skills
- e. Other (If you have ANY additional reasons, please write them here)

24. Taking everything into account do you favor or oppose restrictions on the post-service employment of Air Force Officers?

- a. Strongly favor restrictions.
- b. Moderately favor restrictions.
- c. Neither favor nor oppose restrictions.
- d. Moderately oppose restrictions.
- e. Strongly oppose restrictions.

25. In your opinion, how advantageous or disadvantageous for DOD is the movement of former DOD employees into the defense industry?

- a. Extremely advantageous.
- b. Moderately advantageous.
- c. About equally advantageous and disadvantageous.
- d. Moderately disadvantageous.
- e. Extremely disadvantageous.

26. In your opinion, how advantageous or disadvantageous for defense contractors as a group is the movement of former DOD employees into the defense industry?

- a. Extremely advantageous.
- b. Moderately advantageous.
- c. About equally advantageous and disadvantageous.
- d. Moderately disadvantageous.
- e. Extremely disadvantageous.

27. Restrictions on post-service employment of federal employees should apply to the legislative and judicial branches of the federal government.

- a. Strongly agree.
- b. Moderately agree.
- c. Neither agree or disagree.
- d. Moderately disagree.
- e. Strongly disagree.

28. A retired officer may not sell supplies or war materials to DOD and certain other agencies within _____ year(s) after the date of his or her retirement.

- a. one
- b. two
- c. three
- d. four

29. A retired officer, Regular or Reserve, may never, as agent or attorney, bring a claim against the U.S. involving any subject matter with which he or she was directly involved with while on active service.

- a. True
- b. False

30. A retired Regular officer may within two years after retirement, represent, consult, advise or assist a private party in connection with any matter which was pending under the officer's official responsibility, but that was not directly acted upon by the officer.

- a. True
- b. False

31. A retired Regular officer must notify the Air Force of any employment by a private firm after he or she retires.

- a. True
- b. False

32. In general, is a retired Regular officer precluded from working for a private firm because he or she worked on contracts dealing with that firm while he or she was on active duty?

- a. Yes
- b. No

Appendix H: Determining the Respondents' Influence Over the Acquisition Process

Goal: To develop a demographic breakdown of respondents by overall influence over the acquisition process. This was an attempt to get an objective rating of respondents that could be used latter in cross-tabulations.

Method: Using three-way cross-tabulations.

Given: Responses to Questions 6, 7, and 10 of the survey questionnaire (See Appendix G).

Possible Classifications:

<u>Classification</u>	<u>Criteria</u>
Low	a) 1 or 2 Acquisition Jobs; b) Works on Acquisitions < \$5 million; and, c) Single year - Single Project Programs.
Medium	a) 2 or 3 Acquisition Jobs; b) Works on Acquisitions < \$10 million; and, c) Single project - Multi- phased programs.
High	a) 3 or More Acquisition Jobs; b) > \$10 Million; and c) Multi-programs, Multi- year.

Results:

=====	
<u>Levels of Influence</u>	<u>Number (Percent)</u>

High	116 (72%)
Medium	18 (11%)
Low	27 (17%)
=====	

Appendix I: Evaluation of Test Questions

Two test measurement techniques were used to validate the test. First, a differentiation index (DI) was established for each question. Specifically, the DI compares the scores of those who tested well against the total number who correctly answered the question. A DI of .7 is considered acceptable and further validates the quality of the question. Second, the miss rate of each question was used to determine whether the question caused specific problems not measured by the DI. Questions with a miss rate of over 40 percent, then it was reviewed. The following reflects the results of these two evaluations:

Test Evaluation

=====		
Question #	Missed %	DI

28	34	.68
29	27	.87
30	32	.83
31	46	.69
32	38	.79

Question 31 was reviewed for test construction. The question was found satisfactory. The wording of the question flows from 10 U.S.C. 2397. The results of the survey indicate respondents' confusion over issue. The implications of this are reported in Chapter IV.

Appendix J: Hypothesis Test

Given:

- a) Null Hypothesis: Less than 50 percent of those surveyed felt that post-employment restrictions have adversely affected their post-service employment opportunities.
- b) Sample Mean: 67%
- c) Alpha: .05
- d) Test Statistic

$$Z = \frac{.67 - .5}{.2/12.7} = 10.63$$

- e) Rejection Region: $Z \geq 1.96$

Conclusion: Reject the Null Hypothesis.

According to this survey, a majority of those surveyed felt that post-employment restrictions adversely affected their post-service employment opportunities.

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↓ (sought)
The purpose of this study was to determine what ^(c) affect post-employment conflict of interest law was having on incidents of conflict of interest. ~~Further, this study~~ ^(T) surveyed active-duty Air Force contracting officers and engineering managers to determine whether post-employment restrictions were having an adverse affect on their post-service employment searches. Findings include: 1)

The study's findings can be summarized in four statements. First, no data was available which measured the extent to which private companies, doing business with the federal government, employ former Air Force officers. 2) Second, no data was available which demonstrates the relationship of post-employment conflict of interest law and incidents of conflict of interest. 3) ~~Third, active duty Air~~ ^{A.F.} Force officers lack information on the nature and extent of post-employment restrictions. As result, a majority of the officers tested in this study did not score well on basic knowledge test of post-employment restrictions. ~~Finally, a~~ ^{4) A} majority of those officers surveyed felt post-employment restrictions are adversely affecting their post-service employment opportunities. The author recommends that

Among the recommendations included in the study is the recommendation for the Air Force ~~to~~ improve its post-service education programs. -- Specifically, ~~it recommends~~ that the A.F. ~~Air Force~~ provide separating and retiring members with specific guidance on those restrictions which directly impact post-service employment. In addition, this study recommends that the Department of Defense (DOD) assume a leadership role in standardizing information collection techniques, particularly in those areas related to the post-employment activities of separating and retiring Air Force officers.

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